

South Carolina General Assembly
124th Session, 2021-2022

Download [This Bill](#) in Microsoft Word format

~~Indicates Matter Stricken~~

Indicates New Matter

R104, S631

STATUS INFORMATION

General Bill

Sponsors: Senators Talley and Campsen

Document Path: I:\s-res\sft\017elec.sp.sft.docx

Companion/Similar bill(s): 4063

Introduced in the Senate on March 2, 2021

Introduced in the House on April 6, 2021

Last Amended on March 17, 2021

Passed by the General Assembly on May 13, 2021

Governor's Action: May 18, 2021, Signed

Summary: SC Electronic Notary Public Act

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
3/2/2021	Senate	Introduced and read first time (Senate Journal-page 9)
3/2/2021	Senate	Referred to Committee on Family and Veterans' Services (Senate Journal-page 9)
3/10/2021	Senate	Committee report: Favorable with amendment Family and Veterans' Services (Senate Journal-page 11)
3/11/2021		Scrivener's error corrected
3/17/2021	Senate	Committee Amendment Adopted (Senate Journal-page 23)
3/17/2021	Senate	Read second time (Senate Journal-page 23)
3/17/2021	Senate	Roll call Ayes-45 Nays-0 (Senate Journal-page 23)
3/23/2021	Senate	Read third time and sent to House (Senate Journal-page 12)
4/6/2021	House	Introduced and read first time (House Journal-page 130)
4/6/2021	House	Referred to Committee on Judiciary (House Journal-page 130)
5/11/2021	House	Recalled from Committee on Judiciary (House Journal-page 27)
5/12/2021	House	Read second time (House Journal-page 7)
5/12/2021	House	Roll call Yeas-100 Nays-1 (House Journal-page 7)
5/13/2021	House	Read third time and enrolled (House Journal-page 28)
5/18/2021		Ratified R 104
5/18/2021		Signed By Governor

View the latest [legislative information](#) at the website

VERSIONS OF THIS BILL

[3/2/2021](#)

[3/10/2021](#)

[3/11/2021](#)

3/17/20215/11/2021

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

NOTE: THIS IS A TEMPORARY VERSION. THIS DOCUMENT WILL REMAIN IN THIS VERSION UNTIL FINAL APPROVAL BY THE LEGISLATIVE COUNCIL.

(R104, S631)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE "SOUTH CAROLINA ELECTRONIC NOTARY PUBLIC ACT" BY ADDING CHAPTER 2 TO TITLE 26 SO AS TO DEFINE NECESSARY TERMS; TO PROVIDE PROCEDURES AND TRAINING REQUIREMENTS TO BECOME AN ELECTRONIC NOTARY; TO PROVIDE FOR ACTS THAT MAY BE PERFORMED ELECTRONICALLY; TO PROVIDE RESTRICTIONS FOR THE PERFORMANCE OF ELECTRONIC NOTARIZATION; TO PROVIDE THE REQUIREMENTS TO COMPLETE AN ELECTRONIC NOTARIZATION; TO ESTABLISH MAXIMUM FEES; TO LIMIT THE USE OF THE ELECTRONIC SIGNATURE AND SEAL TO PROPER ELECTRONIC NOTARIAL ACTS; TO REQUIRE THE MAINTENANCE OF AN ELECTRONIC JOURNAL FOR ELECTRONIC NOTARIAL ACTS; TO REQUIRE THE SAFEKEEPING OF AN ELECTRONIC JOURNAL, PUBLIC KEY CERTIFICATE, AND ELECTRONIC SEAL; TO ALLOW THE SECRETARY OF STATE TO PROMULGATE RULES AND REGULATIONS; TO REQUIRE REGISTRATION WITH THE SECRETARY OF STATE; TO REQUIRE AN ELECTRONIC NOTARY TO UTILIZE CURRENT REGISTERED DEVICES; TO PROVIDE FOR THE TERMINATION OF ELECTRONIC NOTARIES PUBLIC; TO PROVIDE PENALTIES; TO APPLY REQUIREMENTS OF NOTARIAL CERTIFICATES TO ELECTRONIC NOTARIES PUBLIC; TO REQUIRE EVIDENCE OF AUTHENTICITY; AND TO PROVIDE LANGUAGE FOR AN ELECTRONIC CERTIFICATE OF AUTHORITY; AND TO AMEND SECTION 26-1-160, RELATING TO UNLAWFUL ACTS, SO AS TO ALLOW THE SECRETARY OF STATE TO TERMINATE A NOTARY PUBLIC'S COMMISSION.

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

Citation

SECTION 1. This act must be known and may be cited as the "South Carolina Electronic Notary Public Act".

South Carolina Electronic Notary Public Act

SECTION 2. Title 26 of the 1976 Code is amended by adding:

"CHAPTER 2

Electronic Notaries Public

Section 26-2-5. For the purposes of this chapter:

(1) '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.

(2) 'Electronic' means relating to technology and having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) 'Electronic document' or 'electronic record' means information that is created, generated, sent, communicated, received, or stored by electronic means.

- (4) 'Electronic journal of notarial acts' or 'electronic journal' means a chronological electronic record of notarizations that is maintained by the electronic notary public who performed the notarizations.
- (5) 'Electronic notarial act' or 'electronic notarization' means an official act by an electronic notary public that involves electronic documents.
- (6) 'Electronic notarial certificate' means the part of, or attachment to, an electronic record that is completed by the electronic notary public, that bears the electronic notary's electronic signature and electronic seal, and that states the facts attested to by the electronic notary in an electronic notarization.
- (7) 'Electronic notarization system' means a set of applications, programs, hardware, software, or technologies designed to enable an electronic notary public to perform electronic notarizations.
- (8) 'Electronic notary public' or 'electronic notary' means a notary public who has registered with the Secretary of State to perform electronic notarial acts in conformance with this chapter.
- (9) 'Electronic notary seal' or 'electronic seal' means information within a notarized electronic document that includes the electronic notary's name, jurisdiction, registration number, and commission expiration date and that generally corresponds to data in notary seals used on paper documents.
- (10) 'Electronic signature' means an electronic symbol or process attached to or logically associated with an electronic document that is executed or adopted by an individual with the intent to sign the document.
- (11) 'Principal' has the same meaning as in Section 26-1-5.
- (12) 'Public key certificate' means an electronic credential that is used to identify an individual who signed an electronic record with the certificate.
- (13) 'Record' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and that is retrievable in perceivable form.
- (14) 'Sole control' means at all times being in the direct physical custody of an electronic notary public or safeguarded by the electronic notary with a password or other secure means of authentication.
- (15) 'Tamper evident' means that any change to a record shall provide evidence of the change.
- (16) 'Verification of fact' means a notarial act in which an electronic notary reviews public or vital records, or other legally accessible data, to ascertain or confirm any of the following facts:
- (a) a date of birth, death, marriage, or divorce;
 - (b) the name of a parent, a marital partner, offspring, or a sibling; or
 - (c) any matter authorized for verification by a notary by other law or rule of this State.

Section 26-2-10. 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 26-2-20. (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 the 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 26-2-140, 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 the successful completion of the course and examination required pursuant to Section 26-2-30;
- (2) the disclosure of any and all license or commission revocations or other disciplinary actions against the individual; and
- (3) any other information, evidence, or declarations 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 26-2-30. (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 26-2-40. 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 26-2-50. (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 ~~26-2-60~~. (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 that 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 ~~26-2-70~~. (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 26-2-80. (A) An 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 that 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) 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 26-2-90. (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 his 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 the notarization was not performed at 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 the electronic notary public's 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 shall establish commercially reasonable standards for the preservation of electronic journals in the event of a resignation, revocation, or expiration of an electronic notary commission, or upon the death of an 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 26-2-100. (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 any theft or vandalism of the electronic notary public's electronic journal, public key certificate, or electronic seal. An electronic notary public immediately shall 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 the resignation, revocation, or expiration of an electronic notary commission or the death of an 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 26-2-110. (A) An electronic notarization system shall comply with this chapter and any regulations promulgated by the Secretary of State pursuant to Section 26-2-190.

(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 the 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), if the commission of an electronic notary public expires or is resigned or revoked, or if the electronic notary dies or is adjudicated as incompetent, then the electronic notary public or his personal representative or guardian shall, within three months, dispose of all or any part of the 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 26-2-120. (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 electronic notary solution provider's electronic notarization system.

Section 26-2-130. (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 electronic 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 the information in the most recently executed electronic registration form.

Section 26-2-140. (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 nonelectronic 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) the submission of an electronic registration form containing a material misstatement or omission of fact;
- (b) the failure to maintain the capability to perform electronic notarial acts; or
- (c) official misconduct by the electronic notary public.

(2) If the Secretary of State terminates an electronic notary public's registration, then the Secretary of State shall send written notice by certified mail to the electronic notary public at his last known address. A person who has had his electronic notary public registration terminated has thirty days from the receipt of the notice to appeal the termination by filing a request for a contested case hearing with the South Carolina Administrative Law Court.

(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 the termination of the electronic notary public's commission or registration.

Section 26-2-150. (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 26-2-160. The provisions contained in Chapter 1 of this title, with regard to notarial certificates, are applicable for the purposes of this chapter.

Section 26-2-170. 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 26-2-180. (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 ~~26-2-190~~. The Secretary of State may promulgate and enforce any regulations and create and enforce any policies and procedures necessary for the administration of this chapter."

Termination of commission

SECTION 3. Section 26-1-160 of the 1976 Code is amended by adding an appropriately lettered subsection at the end to read:

"() The Secretary of State may terminate a notary public's commission upon notification that the notary public has been charged with an offense listed in this section or may terminate the notary public's commission at any subsequent point until the final adjudication of the charges. If the Secretary of State terminates a notary public's commission, then the Secretary of State shall send written notice by certified mail to the notary public at his last known address. A person who has had his notary public commission terminated has thirty days from the receipt of the notice to appeal the termination by filing a request for a contested case hearing with the South Carolina Administrative Law Court."

Applicability to wills and trusts

SECTION 4. This act does not apply to wills and trusts in South Carolina.

Supervision of attorney

SECTION 5. Nothing in this act contravenes the South Carolina law that requires a licensed South Carolina attorney to supervise a closing.

Time effective

SECTION 6. This act takes effect upon approval by the Governor. 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.

Ratified the 18th day of May, 2021.

President of the Senate

Speaker of the House of Representatives

Approved the _____ day of _____ 2021.

Governor

---XX---

This web page was last updated on May 18, 2021 at 12:38 PM