Short Title: Remote Online Notarization Act. (Public)
Sponsors: Representative D. Hall.

Referred to:

A BILL TO BE ENTITLED
AN ACT TO ALLOW REMOTE ONLINE NOTARIZATION.
The General Assembly of North Carolina enacts:

SECTION 1. Chapter 10B of the General Statutes is amended by adding a new Article to read:

"Article 4.
Remote Online Notarization Act.

§ 10B-205. Short title.
This Article is the "Remote Online Notarization Act" and may be cited by that name.

§ 10B-206. Definitions.
The following definitions apply in this Article:

(1) Communication technology. – An electronic device, process, or system that allows a remote online notary and a remotely located principal to communicate with each other simultaneously by sight and sound using audiovisual technology and that makes reasonable accommodation for principals with vision, hearing, or speech impairments.

(2) Communication technology recording. – The simultaneous, synchronous audio and visual recording of a notarial act.

(3) Credential analysis. – The remote analysis of the characteristics and security features of the identification pursuant to G.S. 10B-3(22)a.

(4) Electronic. – As defined in G.S. 10B-101(1).

(5) Electronic document. – As defined in G.S. 10B-101(2).

(6) Electronic journal. – A secure electronic record of notarial acts that contains the information required under Article 3 of this Chapter and G.S. 10B-230.

(7) Electronic seal. – As defined in G.S. 10B-101(5).

(8) Electronic signature. – As defined in G.S. 10B-101(6).

(9) Identity proofing. – A process or service through which a third party or service affirms the identity of a principal through review of personal information from public or proprietary data sources.

(10) Outside of the United States. – A location outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory, insular possession, or other location subject to the jurisdiction of the United States.
(11) Personal appearance. – The use of communication technology by a remotely
located principal to appear before a remote online notary where the remote
online notary is located in the State of North Carolina.
(12) Remote online notarial certificate. – The portion of a notarized electronic
document that is completed by the remote online notary and contains all of the
following:
a. The remote online notary’s electronic signature and the remote online
notary's electronic seal.
b. The facts attested to by the remote online notary in a particular
notarization.
c. A statement that a remotely located principal made the
acknowledgment, oath or affirmation, or verification or proof.
d. A statement that the notarization is a remote online notarization
performed using communication technology by a remote online
notary.
(13) Remote online notarization or remote online notarial act. – A notarial act
performed by means of communication technology.
(14) Remote online notary public or remote online notary. – A notary public who
is registered with the Secretary to perform remote online notarizations.
(15) Remote presentation. – Transmission to the remote online notary through
communication technology of an image of a government-issued identification
credential that is of sufficient quality to enable the remote online notary to
perform credential analysis and subsequently identify the principal seeking
the remote online notary public’s services.
(16) Remotely located principal. – A principal who is not in the physical presence
of the remote online notary.

§ 10B-207. Scope of Article.
Articles 1 and 2 of this Chapter apply to all acts authorized under this Article unless the
provisions of Article 1 or Article 2 of this Chapter directly conflict with the provisions of this
Article, in which case provisions of this Article shall control.

§ 10B-208. Reserved for future codification purposes.

§ 10B-209. Reserved for future codification purposes.

Part 2. Registration.

§ 10B-210. Qualifications.
A person qualified for a remote online notary registration shall meet all of the qualifications
of Part 2 of Article 2 of this Chapter.

§ 10B-211. Reserved for future codification purposes.

§ 10B-212. Reserved for future codification purposes.

§ 10B-213. Reserved for future codification purposes.

§ 10B-214. Reserved for future codification purposes.

§ 10B-215. Reserved for future codification purposes.

§ 10B-216. Reserved for future codification purposes.

§ 10B-217. Reserved for future codification purposes.

§ 10B-218. Reserved for future codification purposes.

§ 10B-219. Reserved for future codification purposes.


§ 10B-220. Types of remote online notarial acts.
(a) The following types of notarial acts may be performed by means of communication
technology:

(1) Acknowledgments.
(2) Jurats.
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(3) Verifications or proofs.

(4) Oaths or affirmations.

(b) A remote online notary may perform any of the notarial acts listed in subsection (a) of this section with respect to tangible records and electronic documents.

(c) Upon registration with the Secretary under this Article, a remote online notary may perform any of the notarial acts listed in subsection (a) of this section as an electronic notarization under Article 2 of this Chapter.

§ 10B-221. Prohibitions.

A remote online notary shall not perform a remote online notarial act if either or both of the following apply:

(1) The principal is not personally known to the remote online notary or identified by satisfactory evidence. A remote online notary who does not have personal knowledge of a principal shall require satisfactory evidence of the principal’s identity.

(2) Any reason set forth in G.S. 10B-20.

§ 10B-222. Use of communication technology.

(a) The communication technology used by a remote online notary to perform notarial acts for remotely located principals shall, making reasonable accommodations for principals with vision, hearing, or speech impairments, comply with all of the following requirements:

(1) Host the meeting between the remote online notary and the remotely located principal in real time.

(2) Allow direct interaction between the principal seeking the remote online notary’s services and the remote online notary so that each can communicate simultaneously by sight and sound through an electronic device, process, or system.

(3) Include audio with sound clear enough that each participant in the remote online notarial act can hear and understand all other participants.

(4) Have sufficient quality to allow a clear and unobstructed visual observation of the face of each participant and any identification provided by the principal for a sufficient time to allow the remote online notary to determine if it is satisfactory evidence. The remote online notary shall determine if the time is sufficient.

(5) Not include prerecorded video or audio or both.

(6) Be capable of recording by the communication technology’s recording and storage services.

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

(c) No person may require a remote online notary to perform any remote online notarial act using a communication technology the remote online notary has not selected.

§ 10B-223. Authority to perform remote online notarial acts.

(a) A remote online notary may perform a remote online notarial act authorized under this Article only while the remote online notary is physically located in this State. A remote online notary physically located in this State may perform a remote online notarial act using communication technology for a remotely located principal 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:
The remote online notary has no actual knowledge of the remote online notarial act being prohibited in the jurisdiction in which the remotely located principal is physically located; and

The remotely located principal placing an electronic signature on the electronic document confirms to the remote online notary that the requested remote online notarial act and the electronic document are:

1. Part of or pertaining to a matter that is to be filed with or is currently before a court, governmental entity, or other entity in the United States;
2. Related to real property located in North Carolina;
3. Related to property, other than real property, located in the United States; or
4. Related to a transaction substantially connected to the United States that does not involve the transfer of real property.

The validity of a remote online notarization performed by a remote online notary of this State according to this Chapter shall be governed by the laws of this State.

§ 10B-224. Requirements and procedures for remote online notarial acts.

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

(1) The remote online notary shall inform the participants that North Carolina law requires that a communication technology recording be made of the remote online notarization.
(2) The remote online notary shall require the principal to demonstrate, to the satisfaction of the remote online notary, that the principal is not under duress and is not otherwise being coerced to complete the transaction.
(3) The remote online notary shall verify the identity of the principal as provided in G.S. 10B-225.
(4) The principal shall verbally state what documents are being signed for the notarial record or the general nature of the transaction.

(b) In addition to the prohibitions contained in G.S. 10B-221, a remote online notary shall refuse to perform a remote online notarial act if any of the following apply:

(1) The remote online notary has reasonable grounds to believe the principal is acting under duress or is being coerced into completing the transaction.
(2) The remote online notary becomes aware that the communication technology is not secure.
(3) The electronic signature of the principal cannot be attached to the electronic document for signature.
(4) The remote online notary’s electronic notarial certificate and seal cannot be attached to the electronic document using an electronic technology that renders any subsequent change or modification to the document evident.

(c) If the notarial act is an oath or affirmation, the remote online notary shall administer the oath or affirmation to the remotely located principal using communication technology.

(d) Any failure of the remote online notary to comply with the requirements of the remote online notarization does not invalidate the notarial act or the electronic record that was notarized, but it does not prevent an aggrieved person from seeking to invalidate the record on other substantive grounds.

(e) As a public official, a remote online notary shall maintain the confidentiality of a principal’s documents at all times.

§ 10B-225. Verification of identity; identity proofing; credential analysis.

(a) The remote online notary shall verify the principal’s identity using one of the following:
(1) The remote online notary's personal knowledge of the person creating the
electronic signature. A remote online notary may rely on the communication
technology to verify the principal's identity unless the remote online notary, in the remote online notary's sole discretion, requires satisfactory evidence.

(2) By a verification or oath or affirmation of a credible witness personally appearing before the remote online notary and known to the notary or whom the officer can identify on the basis of a passport, drivers license, or government-issued nondriver identification card, which is current, before performance of the notarial act.

(3) Satisfactory evidence as provided in subsection (b) of this section.

(b) Satisfactory evidence may be established using either of the methods in subdivisions (1) and (2) of this subsection.

(1) Examination of the following which may be remotely presented as further described in this Article:

   a. Either of the following that contains the signature or a photograph of the principal and is satisfactory to the notary:
      1. A current passport, drivers license, or government-issued nondriver identification card,
      2. Another current form of government identification issued to a principal,

   b. By a verification on oath or affirmation of a credible witness personally appearing before the officer and known to the notary or whom the officer can identify on the basis of a current passport, drivers license, or government-issued nondriver identification card.

(2) Two forms of multifactor identification approved by the Secretary.

(c) Notwithstanding subsection (b) of this section, a remote online notary may require the principal to provide additional information or identification credentials necessary to assure the remote online notary of the identity of the principal.


In performing a remote online notarial act utilizing communication technology under this Article, all of the following components shall be attached to, or logically associated with, the electronic document by the remote online notary, all of which shall be immediately perceptible and reproducible in the electronic record to which the remote online notary’s electronic signature is attached:

(1) The notary's name, State, and county of commissioning exactly as stated on the commission issued by the Secretary.

(2) The words "Remote Online Notary Public Utilizing Communication Technology."

(3) The words "State of North Carolina."

(4) The expiration date of the commission.

(5) The notary's electronic signature.

(6) The completed wording of one of the following notarial certificates:

   a. Acknowledgment.
   b. Jurat.
   c. Verification or proof.
   d. Oath or affirmation.

§ 10B-227. Electronic notarization and remote online notarization.

When using an electronic notarization as well as conducting a remote online notarization, the remote online notary shall comply with the requirements of Articles 1 and 2 of this Chapter. Each electronic notarization shall include a communication technology recording. There shall be no
"§ 10B-230. Electronic journal of remote online notarial acts.

(a) A remote online notary who performs a remote online notarization shall enter information about the remote online notarization in an electronic journal. The electronic journal shall be the exclusive property of the remote online notary. The remote online notary shall not allow another person to make entries in the electronic journal.

(b) At a minimum and for each remote online notarization, the remote online notary shall include the following information in the electronic journal:

1. The time of day when the remote online notary observed the signing of the document by each principal and was presented with the principal's satisfactory evidence of identification.
2. The date of the completion of the remote online notarial certificate.
3. The last and first name of each principal.
4. The type of notarial act performed.
5. The type of document notarized or proceeding performed.
6. The type of satisfactory evidence of identification presented, including, if applicable, the issuing agency and identification number on the identification presented.
7. The type of communication technology used during the remote online notarization.
8. Whether any other person was present with the principal at the time of signature and, if so, the name of that person.
9. The fee, if any, charged by the remote online notary.

(c) A third party involved in a transaction that utilizes remote online notarization may require additional information regarding that transaction be included in the electronic journal kept by the remote online notary.

(d) A remote online notary; guardian, conservator, or agent of a remote online notary; or a personal representative of a deceased remote online notary shall retain a communication technology recording of the performance of each remote online notarial act for 10 years after the performance of the notarial act. A remote online notary; guardian, conservator, or agent of a remote online notary; or a personal representative of a deceased remote online notary may, by written contract, engage a third party, including the communication technology provider, to act as a depository to provide the storage required by this section. The contract shall:

1. Enable the remote online notary; guardian, conservator, or agent of a remote online notary; or a personal representative of a deceased remote online notary to comply with the retention requirements of this section even if the contract is terminated; or
2. Provide that the information will be transferred to the remote online notary; guardian, conservator, or agent of a remote online notary; or a personal representative of a deceased remote online notary if the contract is terminated.

(e) On resignation from, or the revocation or suspension of, a remote online notary's commission, the remote online notary shall retain the electronic journal in accordance with the requirements of G.S. 10B-231.

(f) A remote online notary may designate a custodian to do any of the following:

1. Maintain the electronic journal and any backup copies thereof.
2. Retain a communication technology recording of the notarial act performed and any backup copies thereof.
(3) Provide a method by which a remote online notary can do any of the following:
   a. Access the electronic journal.
   b. Access the communication technology recording.
   c. Export the electronic journal.
   d. Export the communication technology recording.

(g) Upon the death or adjudication of incompetency of a current or former remote online notary, the notary's personal representative or guardian or any other person or custodian knowingly in possession of the electronic journal shall transmit it to the Secretary or otherwise as directed by rules adopted by the Secretary.

§ 10B-231. Security measures by notary; surrender of journal; etc.

(a) A remote online notary shall comply with all of the following security requirements:
   (1) All records of journal entries and communication technology recordings shall be securely stored in a repository under the control of the remote online notary or with a custodian duly appointed under the terms of this Article. The custodian may be a third-party vendor approved by the Secretary for handling, securely storing, or handling and securely storing the records of remote online notarizations with data protection safeguards consistent with generally accepted information security standards.
   (2) Take reasonable steps to ensure that the audio-video communications are secure from interception from an unauthorized third party during transmission between participants involved in a notarial act. The communication technology used by the remote online notary shall employ data protection safeguards consistent with generally accepted information security standards.
   (3) Retain the electronic journal and a backup copy of the electronic journal in a secure location for 10 years after the last notarization chronicled in the electronic journal. The same requirement applies if the remote online notary also maintained a tangible journal of remote online notarial acts. The notary may maintain an electronic journal in an electronic form in a permanent, tamper-evident electronic format.

(b) A remote online notary may surrender the electronic journal to the remote online notary's employer upon termination of employment, but the remote online notary shall also keep and maintain an accurate backup copy of the journal for 10 years.

(c) Except as provided in subsection (b) of this section, the notary shall not surrender or destroy the electronic journal or the communication technology recordings of notarial acts except as required by a court order or as allowed under rules adopted by the Secretary.

(d) Within 10 days of discovering any permanent loss of data, unauthorized use, loss of use, or compromise of security of the electronic journal or the communication technology recordings of notarial acts, the remote online notary shall do all of the following:
   (1) Inform the appropriate law enforcement agency in the case of theft, tampering, or vandalism.
   (2) Notify the appropriate register of deeds and the Secretary in writing and signed in the official name in which the remote online notary was commissioned. The notice shall indicate whether there was any permanent loss of data, unauthorized use, loss of use, or compromise of security of the electronic journal or the audio-video recordings of notarial acts.

(e) The failure of a remote online notary to produce within 30 days of the Department's request any record required by a rule adopted under this Article shall result in the suspension of the remote online notary's power to act as a notary under the provisions of this Chapter until the Secretary reinstates the notary's commission.
Upon resignation, revocation, or expiration of a notary commission, or death of the notary, all notarial records required by statute or rule shall be delivered to the Secretary.

§ 10B-232. Security measures by Secretary.

(a) The Secretary may establish guidelines for the secure storage of the electronic journal and communication technology recording associated with the notarial acts that utilizes standard encryption technologies such as Advanced Encryption Standard (AES) or Rivest-Shamir-Adleman (RSA) encryption.

(b) The Secretary may establish, supplement, or amend third-party service guidelines for the security qualifications of establishing the identity of the principal.

(c) The Secretary may establish standards and processes for communication technology to allow real-time communications such that the participants can see and hear notarial acts. The standards and processes shall ensure that the real-time communications are secure from unauthorized interception, access, or viewing. The Secretary may require that the communication technology used to perform online notarial acts is capable of all of the following:

1. Provides for continuous, synchronous audiovisual feeds.
2. Provides sufficient video resolution and audio clarity to enable the notary and the principal to see and speak with each other simultaneously through live, real-time transmission.
3. Provides sufficient captured image resolution for credential analysis to be performed.
4. Includes a means of authentication that reasonably ensures only authorized parties have access to the audio-video communication.
5. Provides some manner of ensuring that the electronic record presented for online notarization is the same record electronically signed by the principal.
6. Securely creating and storing or transmitting securely to be stored a communication technology recording of the audio-video communication, keeping confidential the questions asked as part of any identity proofing and the means and methods used to generate the credential analysis.

(d) The Secretary may establish standards for tamper-evident technologies such that any subsequent change or modification to the record is self-evident.

(e) A remote online notary shall use a communication technology provided by a third-party vendor that has presented evidence to the Secretary that the communication technology complies with the applicable industry standards for the industry in which it is to be utilized. At a minimum, the communication technology should provide reasonable security measures to prevent unauthorized access to:

1. The live transmission of the audio-video communication.
2. Any communication technology recording of the audio-video communication.
3. The verification methods and credentials used to verify the identity of the principal.
4. The electronic documents presented for remote online notarization.

(f) The Secretary may adopt other rules necessary to ensure the integrity, security, and authenticity of remote online notarizations. In adopting other rules, the Secretary may impose other education requirements on remote online notaries, prescribe the manner of performing remote online notarial acts, and include provisions relating to the integrity and security of the information. In adopting, amending, or repealing a rule governing the performance of a notarial act with respect to a remotely located principal, the Secretary may consider:

1. The most recent standards promulgated by national standard-setting organizations and the National Association of Secretaries of State.
Standards, practices, and customs of other jurisdictions that have laws substantially similar to this Article.

The view of government officials and entities and other interested persons.

The feedback of the advisory committee which may be created under this Article.

What is in the best interest of the State as consistent with G.S. 10B-2. This may be accomplished when and if the Secretary chooses to create an advisory committee consisting of stakeholders from different sectors that may be technology providers, insurance agents, lenders, and other industries that are considered consumers of notarial services. All members of the advisory committee must be residents of this State. Members shall be appointed by the Secretary for a duration of time to be determined by the Secretary and may be removed from the advisory committee at the discretion of the Secretary. The advisory committee shall serve as advisors for the Secretary for purposes of ensuring that the requirements of G.S. 10B-2 are being satisfied. The advisory committee shall have no executive or rulemaking authority.

If the Secretary has established standards regarding technology to perform notarial acts with respect to electronic documents or to perform remote online notarizations, the technology chosen by the remote online notary shall conform to those standards. If the Secretary has established standards under this Article for approval of communication technology or identity proofing, the communication technology and identity proofing selected by the notary must conform to the standards.

In addition to adopting rules under this Article, the Secretary may adopt rules regarding performance of a notarial act. The rules may:

(1) Prescribe the means of performing a notarial act involving a remotely located principal using communication technology.

(2) Establish standards for communication technology, identity proofing, and credential analysis.

(3) Establish requirements or procedures to approve providers of communication technology and the process of identity proofing and credential analysis.

(4) Establish standards and a period for the retention of a communication technology recording created under this Article for notarial acts for a period of no more than 10 years.

A paper or tangible copy of an electronic document that an attorney licensed under the laws of this State has certified to be a true and correct copy under subsection (b) of this section satisfies any requirement of law that, as a condition for recording, filing, or submission, the document must comply with all of the following requirements:

(1) Is an original or in writing.

(2) Is signed or contains an original signature, if the document contains an electronic signature of the person required to sign the document.
(3) Is notarized, acknowledged, verified, witnessed, or made under oath, if the
document contains an electronic signature of the person authorized to perform
that act, and all other information required to be included.

(b) An attorney licensed under the laws of this State may certify that a paper or tangible
copy of an electronic document is a true and correct copy of the electronic document provided
that the attorney has reasonably confirmed that the electronic document is in a tamper-evident
format and the attorney:

(1) Detected no changes or errors in any electronic signature or other information
in the electronic document.
(2) Personally printed or supervised the printing of the electronic document onto
paper or other tangible medium.
(3) Has not made any changes or modifications to the electronic document or to
the paper or tangible copy thereof other than the certification described in this
subsection.

(c) A State or local official charged with recording, filing, or submitting documents who
does not have an electronic recording system, if the electronic recording system is not operational
at any time, or if the electronic recording system does not accept the type of document being
submitted, shall record a paper or tangible copy of a document that is otherwise entitled to be
recorded under the laws of this State, provided that the paper or tangible copy has been
certified by an attorney who prepared the electronic document or has access to the original
electronic document to be a true and correct copy of an electronic document under subsection (b)
of this section as evidenced by a certification. The certification shall comply with all of the
following requirements:

(1) Is signed and dated by the attorney.
(2) Identifies the jurisdiction in which the certification is performed.
(3) Indicates the capacity in which the attorney is issuing the certification.

(d) The following form of certification is sufficient for the purposes of this section, if
completed with the information required by subsection (c) of this section:

State of _______________
County of ______________

I certify that the foregoing and annexed document [entitled ____________________][dated
______________________][and] containing [_____] pages is a true and correct copy of an electronic document
printed by me or under my supervision. I further certify that, at the time of printing, no security
features present on the electronic document indicated any changes or errors in an electronic
signature or other information in the electronic document since its creation or execution.

________________________
Signature of Attorney

North Carolina State Bar Number

Notarial Certificate as required by law

(e) If a certification is completed in the manner required by subsection (d) of this section
and is attached to or made a part of a paper or tangible document, the certification is prima facie
evidence that the requirements of subsection (b) of this section have been satisfied with respect
to the document.

(f) This section does not apply to a plat, map, or survey of real property if under another
law of this State:

(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) The plat, map, or survey must be recorded in a different location than a deed
to real property.
(g) As used in this section, "document" shall mean information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"§ 10B-241. Reserved for future codification purposes.

"§ 10B-242. Reserved for future codification purposes.

"§ 10B-243. Reserved for future codification purposes.

"§ 10B-244. Reserved for future codification purposes.

"§ 10B-245. Reserved for future codification purposes.


"§ 10B-246. Real estate transactions.

(a) Nothing in this Article shall be construed to alter or supersede the law as set forth in Chapter 84 of the General Statutes, G.S. 10B-20(i) through (k), G.S. 75-1.1, or any opinion or ruling by the North Carolina State Bar or a North Carolina court of competent jurisdiction and pertaining to the unauthorized practice of law in this State, including, but not limited to, the requirements that a licensed North Carolina attorney shall supervise a residential real estate closing under Authorized Practice Advisory Opinion 2002-1 issued by the North Carolina State Bar and perform any and all services defined as the practice of law for real property located in this State.

(b) A remote online notary who is not a licensed North Carolina attorney is prohibited from rendering services or advice that constitutes the practice of law in this State.

"§ 10B-247. Reserved for future codification purposes.

"§ 10B-248. Reserved for future codification purposes.

"§ 10B-249. Reserved for future codification purposes.

"§ 10B-250. Reserved for future codification purposes."

SECTION 2. G.S. 10B-2 reads as rewritten:

"§ 10B-2. Purposes.

This Chapter shall be construed and applied to advance its underlying purposes, which are the following:

(1) To promote, serve, and protect the public interests.

(2) To simplify, clarify, and modernize the law governing notaries.

(3) To prevent fraud and forgery.

(4) To foster ethical conduct among notaries.

(5) To enhance interstate recognition of notarial acts.

(6) To integrate procedures for traditional paper and electronic notarial acts, all of the following notarial acts:

a. Traditional paper.

b. Electronic.

c. Remote online.

SECTION 3. This act becomes effective January 1, 2022.