

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 776
Committee Substitute Favorable 5/5/21
PROPOSED SENATE COMMITTEE SUBSTITUTE H776-PCS40664-BD-26

Short Title: Remote Electronic Notarization Act.

(Public)

Sponsors:

Referred to:

May 4, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW REMOTE ELECTRONIC NOTARIZATION.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** Article 2 of Chapter 10B of the General Statutes is amended by adding
5 a new Part to read:

6 "Part 4A. Remote Electronic Notarization.

7 "§ 10B-134. Reserved for future codification purposes.

8 "§ 10B-134.1. Definitions.

9 In addition to the definitions provided in this Article, the following definitions shall apply in
10 this Part:

- 11 (1) Communication technology. – An electronic device, process, or system that
12 allows a remote electronic notary and a remotely located principal to
13 communicate with each other simultaneously by sight and sound using
14 audiovisual technology and that makes reasonable accommodation for
15 remotely located principals with vision, hearing, or speech impairments.
- 16 (2) Communication technology recording. – The simultaneous, synchronous
17 audio and visual recording of a notarial act.
- 18 (3) Credential analysis. – A process or service through which a third party or
19 service performs a remote analysis of the characteristics and security features
20 of the identification pursuant to G.S. 10B-3(22)a.
- 21 (4) Electronic journal. – A secure electronic record of notarial acts that contains
22 the information required under G.S. 10B-134.15.
- 23 (5) Identity proofing. – A process or service through which a third party or service
24 affirms the identity of a remotely located principal through review of personal
25 information from public or proprietary data sources.
- 26 (6) Remote electronic notarial certificate. – The portion of a notarized electronic
27 document that is completed by the remote electronic notary and contains all
28 of the following:
- 29 a. The remote electronic notary's electronic signature and the remote
30 electronic notary's electronic seal.
- 31 b. The facts attested to by the remote electronic notary in a particular
32 notarization.
- 33 c. A statement that a remotely located principal made the
34 acknowledgment, oath or affirmation, or verification or proof.



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- 1 d. A statement that the notarization is a remote electronic notarization
2 performed using communication technology by a remote electronic
3 notary.
- 4 e. An attestation by the remote electronic notary that, at the time of the
5 remote electronic notarization, the remote electronic notary was
6 physically located in North Carolina and that the remote electronic
7 notary verified that the remotely located principal was physically
8 located in North Carolina.
- 9 f. An acknowledgment or jurat certification identifying the North
10 Carolina county where the remotely located principal was physically
11 located at the time of the remote electronic notarization.

- 12 (7) Remote electronic notarization or remote electronic notarial act. – A notarial
13 act performed by means of communication technology.
- 14 (8) Remote electronic notary public or remote electronic notary. – A notary public
15 who is registered with the Secretary to perform remote electronic
16 notarizations.
- 17 (9) Remotely located principal. – A principal who is not in the physical presence
18 of the remote electronic notary.
- 19 (10) Third-party vendor. – Any person providing communication technology,
20 credential analysis, identity proofing, or custodial services to remote
21 electronic notaries.

22 **"§ 10B-134.2.** Reserved for future codification purposes.

23 **"§ 10B-134.3. Types of remote electronic notarial acts; prohibitions.**

24 (a) Upon registration with the Secretary under this Article, a remote electronic notary
25 may perform any of the notarial acts listed in G.S. 10B-115 by means of communication
26 technology in accordance with this Part. A remote electronic notary may perform any authorized
27 remote notarial act with respect to tangible records or electronic documents.

28 (b) A remote electronic notary shall not perform a remote electronic notarial act if any of
29 the following apply:

- 30 (1) The remotely located principal is not physically located in this State.
- 31 (2) The remotely located principal is not personally known to the remote
32 electronic notary or the remotely located principal's identity cannot be verified
33 under G.S. 10B-134.11.
- 34 (3) Any reason set forth in G.S. 10B-20.
- 35 (4) Any reason set forth in G.S. 10B-134.9.

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

- 38 (1) A self-proved will executed pursuant to Article 4A of Chapter 31 of the
39 General Statutes.
- 40 (2) An advance directive for a natural death executed pursuant to Article 23 of
41 Chapter 90 of the General Statutes.
- 42 (3) A health care power of attorney executed pursuant to Article 3 of Chapter 32A
43 of the General Statutes.
- 44 (4) A revocable or irrevocable trust or any document amending the same.
- 45 (5) A death beneficiary form that requires an acknowledgment.
- 46 (6) A durable power of attorney except a statutory limited power of attorney for
47 real estate.
- 48 (7) A codicil to a will.
- 49 (8) Any document related to the renunciation of parental rights in an adoption.
- 50 (9) Mail-in absentee ballots issued under Article 20 of Chapter 163 of the General
51 Statutes.

1 (d) The prohibitions in subdivision (b)(1) of this section and subsection (c) of this section
2 shall not apply when, at the time the remote electronic notarial act is performed, all of the
3 following conditions are met:

4 (1) The remotely located principal is a member of the Armed Forces of the United
5 States or is the spouse of a member of the Armed Forces of the United States.

6 (2) The remotely located principal is located out of this State pursuant to military
7 orders assigning the member of the Armed Forces of the United States to
8 active duty outside this State for more than 120 days.

9 (3) The remotely located principal is physically located on the military
10 installation or vessel named in the military orders.

11 (e) No remotely notarized power of attorney may be used by the attorney-in-fact with
12 any other remotely notarized document to convey title to, or transfer any interest in, a remotely
13 located principal's real property. This subsection does not apply to powers of attorney executed
14 by a remotely located principal under subsection (d) of this section.

15 "§ 10B-134.4. Reserved for future codification purposes.

16 "§ 10B-134.5. Use of communication technology.

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

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

23 (2) Allow direct interaction between the remotely located principal seeking the
24 remote electronic notary's services and the remote electronic notary so that
25 each can communicate simultaneously by sight and sound through an
26 electronic device, process, or system.

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

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

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

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

37 (7) Be capable of utilizing the IP address of the remotely located principal to
38 corroborate that the remotely located principal is physically located in North
39 Carolina.

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

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

49 "§ 10B-134.6. Reserved for future codification purposes.

50 "§ 10B-134.7. Authority to perform remote electronic notarial acts.

1 (a) A remote electronic notary may perform a remote electronic notarial act authorized
2 under this Article only while the remote electronic notary is physically located in this State.

3 (b) Except as provided in G.S. 10B-134.3(c), a remote electronic notary physically
4 located in this State may perform a remote electronic notarial act using communication
5 technology only for a remotely located principal who is physically located in this State. The
6 location of the remotely located principal shall be verified through one of the following methods:

7 (1) The remotely located principal's verification, by oath or affirmation to the
8 remote electronic notary, of the North Carolina county in which the remotely
9 located principal is physically located.

10 (2) The communication technology used for the remote electronic notarization
11 reflects that the IP address being used by the remotely located principal is
12 physically located in North Carolina.

13 (c) A remote electronic notarization performed by a remote electronic notary of this State
14 according to this Chapter is governed by the laws of this State.

15 **"§ 10B-134.8.** Reserved for future codification purposes.

16 **"§ 10B-134.9. Requirements and procedures for remote electronic notarial acts.**

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

19 (1) The remote electronic notary shall inform the participants that North Carolina
20 law requires that a communication technology recording be made of the
21 remote electronic notarization.

22 (2) The remote electronic notary shall require the remotely located principal to
23 demonstrate, to the satisfaction of the remote electronic notary, that the
24 remotely located principal is not under duress and is not otherwise being
25 coerced to complete the transaction.

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

28 (4) The remotely located principal shall verbally state what documents are being
29 signed for the notarial record or the general nature of the transaction.

30 (5) The location of the remotely located principal shall be verified in accordance
31 with G.S. 10B-134.7(b).

32 (b) In addition to the prohibitions contained in G.S. 10B-134.3, a remote electronic
33 notary shall refuse to perform a remote electronic notarial act if any of the following apply:

34 (1) The remote electronic notary has reasonable grounds to believe the remotely
35 located principal is acting under duress or is being coerced into completing
36 the transaction.

37 (2) The remote electronic notary becomes aware that the communication
38 technology is not secure.

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

41 (4) The remote electronic notary's electronic notarial certificate and seal cannot
42 be attached to the electronic document using an electronic technology that
43 renders any subsequent change or modification to the document evident.

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

47 (d) In judicial actions or proceedings when an oral oath or affirmation is administered to
48 a witness that does not require notarization of a record or a notarial certificate and seal when
49 done in person, any notary public registered with the Secretary, whether or not registered as a
50 remote electronic notary, may administer that oath or affirmation while physically located in this
51 State to the remotely located witness using communication technology, provided that the notary

1 satisfies all requirements of this Article relating to the identity proofing of the witness. The notary
2 shall not be required to select the medium of communication technology or to retain a
3 communication technology recording of the performance of each remote oral oath or affirmation.

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

8 (f) A remote electronic notary shall maintain the confidentiality of a remotely located
9 principal's documents at all times.

10 "**§ 10B-134.10.** Reserved for future codification purposes.

11 "**§ 10B-134.11. Verification of identity; identity proofing; credential analysis.**

12 (a) Prior to the remote electronic notarial act, the remote electronic notary shall cause to
13 have each remotely located principal's identity verified through one of the following methods:

14 (1) The remote electronic notary's personal knowledge of the remotely located
15 principal creating the electronic signature.

16 (2) All of the following:

17 a. Credential analysis, approved by the Secretary, of a current document
18 issued by a federal, state, or federal- or state-recognized tribal
19 government agency bearing the photographic image of the individual's
20 face and either the signature or a physical description of the individual.

21 b. Identity proofing approved by the Secretary.

22 c. Comparison, by the remote electronic notary, of the current document
23 issued by a federal, state, or federal- or state-recognized tribal
24 government agency bearing the photographic image of the individual's
25 face and either the signature or a physical description of the individual
26 presented by the remotely located principal during credential analysis
27 and the image of the remotely located principal via the communication
28 technology.

29 (b) Notwithstanding subsection (a) of this section, a remote electronic notary may require
30 the remotely located principal to provide additional information or identification credentials
31 necessary to assure the remote electronic notary of the identity of the remotely located principal.

32 "**§ 10B-134.12.** Reserved for future codification purposes.

33 "**§ 10B-134.13. Electronic notarization and remote electronic notarization.**

34 When using an electronic notarization as well as conducting a remote electronic notarization,
35 the remote electronic notary shall comply with the requirements of Article 1 of this Chapter. Each
36 remote electronic notarization shall include a communication technology recording. There shall
37 be no requirement that the communication technology recording further include any transactions
38 other than the remote electronic notarial act unless the Secretary specifies a requirement to also
39 record interactions of those particular transactions.

40 "**§ 10B-134.14.** Reserved for future codification purposes.

41 "**§ 10B-134.15. Electronic journal of remote electronic notarial acts.**

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

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

48 (1) The date and time when the remote electronic notary observed the signing of
49 the document by each remotely located principal and verified the remotely
50 located principal's identity under G.S. 10B-134.11.

- 1 (2) The date and time of the completion of the remote electronic notarial
2 certificate.
- 3 (3) The last and first name of each remotely located principal.
- 4 (4) The type of notarial act performed.
- 5 (5) The type of document notarized or proceeding performed.
- 6 (6) The type of identification presented, including, if applicable, the issuing
7 agency and identification number on the identification presented.
- 8 (7) The type of communication technology used during the remote electronic
9 notarization.
- 10 (8) Whether any other person was present with the remotely located principal at
11 the time of signature and, if so, the name of that person.
- 12 (9) The fee, if any, charged by the remote electronic notary.
- 13 (c) A third party involved in a transaction that utilizes remote electronic notarization may
14 require additional information regarding that transaction be included in the electronic journal
15 kept by the remote electronic notary.
- 16 (d) A remote electronic notary; guardian, conservator, or agent of a remote electronic
17 notary; or a personal representative of a deceased remote electronic notary shall retain a
18 communication technology recording of the performance of each remote electronic notarial act
19 for 10 years after the performance of the notarial act. A remote electronic notary; guardian,
20 conservator, or agent of a remote electronic notary; or a personal representative of a deceased
21 remote electronic notary may, by written contract, engage a third party, including the
22 communication technology provider, to act as a depository to provide the storage required by this
23 section. The contract shall:
- 24 (1) Enable the remote electronic notary; guardian, conservator, or agent of a
25 remote electronic notary; or a personal representative of a deceased remote
26 electronic notary to comply with the retention requirements of this section
27 even if the contract is terminated; or
- 28 (2) Provide that the information will be transferred to the remote electronic
29 notary; guardian, conservator, or agent of a remote electronic notary; or a
30 personal representative of a deceased remote electronic notary if the contract
31 is terminated.
- 32 (e) On resignation from, or the revocation or suspension of, a remote electronic notary's
33 commission, the remote electronic notary shall retain the electronic journal in accordance with
34 the requirements of this section and G.S. 10B-134.17.
- 35 (f) A remote electronic notary may designate a steward, who must be a third-party vendor
36 approved by the Secretary in accordance with G.S. 10B-134.20, to do any of the following:
- 37 (1) Maintain the electronic journal and any backup copies thereof.
- 38 (2) Retain a communication technology recording of the notarial act performed
39 and any backup copies thereof.
- 40 (3) Provide a method by which a remote electronic notary can do any of the
41 following:
- 42 a. Access the electronic journal.
- 43 b. Access the communication technology recording.
- 44 c. Export the electronic journal.
- 45 d. Export the communication technology recording.
- 46 (g) A remote electronic notary shall designate a steward, who must be a third-party
47 vendor approved by the Secretary, to receive and maintain the remote electronic notary's
48 electronic journal and all other notarial records under this Article for the time period and in a
49 manner as required by law or by rule adopted by the Secretary as follows:

1 (1) Upon resignation, revocation, or expiration of a notary commission, the
2 remote electronic notary shall deliver to the steward all notarial records
3 required by statute or rule to the steward.

4 (2) Upon the death or adjudication of incompetency of a current or former remote
5 electronic notary, the remote electronic notary's personal representative or
6 guardian or any other person knowingly in possession of the electronic journal
7 and other notarial records shall transmit the same to the steward.

8 **"§ 10B-134.16.** Reserved for future codification purposes.

9 **"§ 10B-134.17. Security measures by notary; surrender of journal; etc.**

10 (a) A remote electronic notary shall comply with all of the following security
11 requirements:

12 (1) All records of journal entries and communication technology recordings shall
13 be securely stored in a repository under the control of the remote electronic
14 notary or with a steward duly appointed under the terms of this Article. The
15 steward may be a third-party vendor approved by the Secretary for handling,
16 securely storing, or handling and securely storing the records of remote
17 electronic notarizations with data protection safeguards consistent with
18 generally accepted information security standards.

19 (2) Take reasonable steps to ensure that the communication technology
20 recordings are secure from interception from an unauthorized third party
21 during transmission between participants involved in a remote electronic
22 notarial act. The communication technology used by the remote electronic
23 notary shall employ data protection safeguards consistent with generally
24 accepted information security standards.

25 (3) Retain the electronic journal and a backup copy of the electronic journal in a
26 secure location for 10 years after the last notarization chronicled in the
27 electronic journal. The same requirement applies if the remote electronic
28 notary also maintained a tangible journal of remote electronic notarial acts.
29 The notary may maintain an electronic journal in an electronic form in a
30 permanent, tamper-evident electronic format.

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

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

38 (d) Within 10 days of discovering any permanent loss of data, unauthorized use, loss of
39 use, or compromise of security of the electronic journal or the communication technology
40 recordings of remote electronic notarial acts, the remote electronic notary shall do all of the
41 following:

42 (1) Inform the appropriate law enforcement agency in the case of theft, tampering,
43 or vandalism.

44 (2) Notify the appropriate register of deeds and the Secretary in writing and signed
45 in the official name in which the remote electronic notary was commissioned.
46 The notice shall indicate whether there was any permanent loss of data,
47 unauthorized use, loss of use, or compromise of security of the electronic
48 journal or the communication technology recordings of remote electronic
49 notarial acts.

50 (e) The failure of a remote electronic notary to produce within 30 days of the
51 Department's request any record required by a rule adopted under this Article shall result in the

1 suspension of the remote electronic notary's power to act as a notary under the provisions of this
2 Chapter until the Secretary reinstates the notary's commission.

3 "§ 10B-134.18. Reserved for future codification purposes.

4 "§ 10B-134.19. Security measures by Secretary.

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

9 (b) The Secretary may establish, supplement, or amend third-party service guidelines for
10 standards and processes for identity proofing and credential analysis services so that third-party
11 vendors interacting with remote electronic notaries satisfy the security qualifications of
12 establishing the identity of the remotely located principal.

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

19 (1) Provides for continuous, synchronous audiovisual feeds.

20 (2) Provides sufficient video resolution and audio clarity to enable the notary and
21 the remotely located principal to see and speak with each other simultaneously
22 through live, real-time transmission.

23 (3) Provides sufficient captured image resolution for credential analysis to be
24 performed.

25 (4) Includes a means of authentication that reasonably ensures only authorized
26 parties have access to the communication technology and communication
27 technology recordings.

28 (5) Provides some manner of ensuring that the electronic record presented for
29 electronic notarization is the same record electronically signed by the
30 remotely located principal.

31 (6) Securely creating and storing or transmitting securely to be stored a
32 communication technology recording of the communication technology
33 recording, keeping confidential the questions asked as part of any identity
34 proofing and the means and methods used to generate the credential analysis.

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

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

42 (1) The live transmission of the remote electronic notarial act.

43 (2) Any communication technology recording of the remote electronic notarial
44 act.

45 (3) The verification methods and credentials used to verify the identity of the
46 remotely located principal.

47 (4) The electronic documents presented for remote electronic notarization.

48 (f) The Secretary may adopt other rules necessary to ensure the integrity, security, and
49 authenticity of remote electronic notarizations. In adopting other rules, the Secretary may impose
50 other education requirements on remote electronic notaries, prescribe the manner of performing
51 remote electronic notarial acts, and include provisions relating to the integrity and security of the

1 information. In adopting, amending, or repealing a rule governing the performance of a remote
2 electronic notarial act with respect to a remotely located principal, the Secretary may consider:

- 3 (1) The most recent standards promulgated by national standard-setting
4 organizations and the National Association of Secretaries of State.
- 5 (2) Standards, practices, and customs of other jurisdictions that have laws
6 substantially similar to this Article.
- 7 (3) The view of government officials and entities and other interested persons.
- 8 (4) The feedback of the advisory committee which may be created under this
9 Article.
- 10 (5) What is in the best interest of the State as consistent with G.S. 10B-2. This
11 may be accomplished when and if the Secretary chooses to create an advisory
12 committee consisting of stakeholders from different sectors that may be
13 technology providers, insurance agents, lenders, and other industries that are
14 considered consumers of notarial services. All members of the advisory
15 committee must be residents of this State. Members shall be appointed by the
16 Secretary for a duration of time to be determined by the Secretary and may be
17 removed from the advisory committee at the discretion of the Secretary. The
18 advisory committee shall serve as advisors for the Secretary for purposes of
19 ensuring that the requirements of G.S. 10B-2 are being satisfied. The advisory
20 committee shall have no executive or rulemaking authority.

21 (g) If the Secretary has established standards regarding technology to perform remote
22 electronic notarial acts with respect to electronic documents or to perform remote electronic
23 notarizations, the technology chosen by the remote electronic notary shall conform to those
24 standards. If the Secretary has established standards under this Article for approval of
25 communication technology, credential analysis, identity proofing, or custodial services to remote
26 electronic notaries, the communication technology, credential analysis, identity proofing, or
27 custodial services selected by the notary must conform to the standards.

28 (h) In addition to adopting rules under this Part, the Secretary may adopt rules regarding
29 performance of a remote electronic notarial act. The rules may:

- 30 (1) Prescribe the means of performing a remote electronic notarial act involving
31 a remotely located principal using communication technology.
- 32 (2) Establish standards, processes, and procedures for communication
33 technology, credential analysis, identity proofing, or custodial services.
- 34 (3) Establish requirements or procedures to approve third-party vendors.
- 35 (4) Establish standards and a period for the retention of a communication
36 technology recording created under this Part for notarial acts for a period of
37 no more than 10 years.

38 **"§ 10B-134.20. Standards for third-party vendors; liability.**

39 (a) Third-party vendors shall meet all standards established by the Secretary under
40 G.S. 10B-134.19 for the provision of services to remote electronic notaries in this State. If the
41 Secretary has not established standards for a service, a third-party vendor may not furnish that
42 service to a remote electronic notary public until the Secretary has determined that the provided
43 service meets security standards generally accepted within the industry for that service.

44 (b) Third-party vendors are liable to any person who suffers damages from a remote
45 electronic notarial act if all of the following apply:

- 46 (1) The damage is proximately caused by a service provided by the third-party
47 vendor that failed to meet any standard under subsection (a) of this section.
- 48 (2) The person damaged was a party to, or in privity with a party to, the remote
49 electronic notarial act proximately causing the damage.

50 (c) Venue in any civil action brought under this Part shall not be controlled or established
51 by a third-party vendor agreement or any other contractual arrangement with the remote

1 electronic notary or the remotely located principal as a party to the contractual arrangement. Any
2 provision in a third-party vendor agreement that requires mandatory binding arbitration is void
3 and unenforceable. For purposes of this subsection, "third-party vendor agreement" means an
4 agreement between a third-party vendor and a remote electronic notary for the provision of
5 communication technology, credential analysis, identity proofing, or custodial services.

6 **"§ 10B-134.21. Real estate transactions.**

7 (a) Nothing in this Part shall be construed to alter or supersede the law as set forth in
8 Chapter 84 of the General Statutes, G.S. 10B-20(i) through (k), G.S. 75-1.1, or any opinion or
9 ruling by a North Carolina court of competent jurisdiction or the North Carolina State Bar and
10 pertaining to the unauthorized practice of law in this State, including the requirements that a
11 licensed North Carolina attorney shall supervise a residential real estate closing under Authorized
12 Practice Advisory Opinion 2002-1 issued by the North Carolina State Bar and perform any and
13 all services defined as the practice of law for real property located in this State.

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

16 **"§ 10B-134.22.** Reserved for future codification purposes.

17 **"§ 10B-134.23.** Reserved for future codification purposes.

18 **"§ 10B-134.24.** Reserved for future codification purposes.

19 **"§ 10B-134.25.** Reserved for future codification purposes.

20 **"§ 10B-134.26.** Reserved for future codification purposes."

21 **SECTION 2.(a)** G.S. 10B-2(6) reads as rewritten:

22 "(6) To integrate procedures for ~~traditional paper and electronic notarial acts.~~all of
23 the following notarial acts:

24 a. Traditional paper.

25 b. Electronic notarization.

26 c. Remote electronic notarization."

27 **SECTION 2.(b)** G.S. 10B-101 reads as rewritten:

28 **"§ 10B-101. Definitions.**

29 The following definitions apply in this Article:

30 (1) ~~"Electronic" means relating~~ Electronic. – Relating to technology having
31 electrical, digital, magnetic, wireless, optical, electromagnetic, or similar
32 capabilities.

33 (2) ~~"Electronic Document" means information~~ Electronic document. –
34 Information that is created, generated, sent, communicated, received, or stored
35 by electronic means.

36 (3) ~~"Electronic Notarial Act" and "Electronic Notarization" mean an~~ Electronic
37 notarial act and electronic notarization. – An official act by an electronic
38 notary public that involves electronic documents.

39 (4) ~~"Electronic Notary Public" and "Electronic Notary" mean a~~ Electronic notary
40 public and electronic notary. – A notary public who has registered with the
41 Secretary the capability of performing electronic notarial acts in conformance
42 with this Article.

43 (5) ~~"Electronic Notary Seal" and "Electronic Seal" mean information~~ Electronic
44 notary seal and electronic seal. – Information within a notarized electronic
45 document that includes the notary's name, jurisdiction, and commission
46 expiration date, and generally corresponds to data in notary seals used on
47 paper documents.

48 (6) ~~"Electronic Signatures" means an~~ Electronic signatures. – An electronic
49 symbol or process attached to or logically associated with an electronic
50 document and executed or adopted by a person with the intent to sign the
51 document.

1 (7) ~~"Notary's Electronic Signature" means those Notary's electronic signature. –~~
2 ~~Those~~ forms of electronic signature which have been approved by the
3 Secretary as authorized in G.S. 10B-125, as an acceptable means for an
4 electronic notary to affix the notary's official signature to an electronic record
5 that is being notarized.

6 (8) Remote electronic notary public or remote electronic notary. – As defined in
7 G.S. 10B-134.1."

8 **SECTION 2.(c)** G.S. 10B-105 reads as rewritten:

9 **"§ 10B-105. Qualifications.**

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

- 12 (1) Hold a valid commission as a notary public in the State of North Carolina.
- 13 (2) Except as otherwise provided, abide by all the provisions of Article 1 of this
14 Chapter.
- 15 (3) Satisfy the requirements of G.S. 10B-107.
- 16 (4) Submit an electronic registration form containing no significant misstatement
17 or omission of fact.

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

20 **SECTION 2.(d)** G.S. 10B-106 reads as rewritten:

21 **"§ 10B-106. Registration with the Secretary of State.**

22 (a) Before performing notarial acts ~~electronically~~, electronically or remotely, a notary
23 shall register the capability to notarize electronically or remotely with the Secretary.

24 (b) The term of registration as an electronic notary or remote electronic notary shall
25 coincide with the term of the notary's commission under Article 1 of this Chapter.

26 (c) An electronic notary or remote electronic notary shall reregister the capability to
27 notarize electronically or remotely at the same time the notary applies for recommissioning under
28 the requirements of Article 1 of this Chapter.

29 (d) An electronic form shall be used by an electronic notary or remote electronic notary
30 in registering with the Secretary and it shall include, at least all of the following:

- 31 (1) The applicant's full legal name and the name to be used for commissioning,
32 excluding nicknames.
- 33 (2) The state and county of commissioning of the registrant.
- 34 (3) The expiration date of the registrant's notary commission.
- 35 (4) Proof of successful completion of the course of instruction on electronic
36 notarization as required by this Article.
- 37 (5) A description of the technology the registrant will use to create an electronic
38 signature in performing official acts.
- 39 (6) If the device used to create the registrant's electronic signature was issued or
40 registered through a licensed certification authority, the name of that
41 authority, the source of the license, the starting and expiration dates of the
42 device's term of registration, and any revocations, annulments, or other
43 premature terminations of any registered device of the registrant that was due
44 to misuse or compromise of the device, with the date, cause, and nature of
45 each termination explained in detail.
- 46 (7) The e-mail address of the registrant.

47 The information provided in a registration that relates to subdivision (7) of this section shall
48 be considered confidential information and shall not be subject to disclosure under Chapter 132
49 of the General Statutes, except as provided by rule.

1 (e) The electronic registration form for an electronic notary or remote electronic notary
2 shall be transmitted electronically to the Secretary and shall include any decrypting instructions,
3 codes, keys, or software that allow the registration to be read.

4 (f) Within 10 business days after the change of any registration information required of
5 an electronic ~~notary,~~ notary or remote electronic notary, the notary shall electronically transmit
6 to the Secretary a notice of the change of information signed with the notary's official electronic
7 signature."

8 **SECTION 2.(e)** G.S. 10B-117 reads as rewritten:

9 **"§ 10B-117. Notarial components of electronic document.**

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

- 14 (1) The notary's name, state, and county of commissioning exactly as stated on
15 the commission issued by the ~~Secretary;~~Secretary.
- 16 (2) The words "Electronic Notary ~~Public";~~Public" or "Remote Electronic Notary
17 Public Utilizing Communication Technology."
- 18 (3) The words "State of North Carolina";~~Carolina.~~"
- 19 (4) The expiration date of the ~~commission;~~commission.
- 20 (5) The notary's electronic ~~signature;~~ and signature.
- 21 (6) The completed wording of one of the following notarial certificates:
 - 22 a. ~~Acknowledgment;~~Acknowledgment.
 - 23 b. ~~Jurat;~~Jurat.
 - 24 c. Verification or ~~proof;~~ or proof.
 - 25 d. Oath or affirmation."

26 **SECTION 3.** Article 2 of Chapter 10B of the General Statutes is amended by adding
27 a new Part to read:

28 "Part 7. Papering Out.

29 **"§ 10B-160.** Reserved for future codification purposes.

30 **"§ 10B-161. Papering out of electronic records in tangible form.**

31 (a) A paper or tangible duplicate of an electronic document subject to electronic
32 notarization shall be presumed to be a true and correct duplicate of the notarized electronic
33 document if the electronic notarial certificate is affixed to the electronic document in compliance
34 with G.S. 10B-226 and the electronic document has not been changed or modified since the
35 affixation of the electronic notarial certificate.

36 (b) If a custodian attests, in accordance with this section, that the electronic document
37 with the electronic notarial certificate is a true and correct duplicate of the electronic document
38 certification and such attestation is attached to or made a part of a paper or tangible duplicate of
39 an electronic document, the attestation is prima facie evidence that the requirements of this
40 section have been satisfied with respect to the paper or tangible duplicate of the electronic
41 document. The custodian must attest that the electronic document is in a tamper-evident format
42 and to at least all of the following:

- 43 (1) The capacity in which custodian has custody of the electronic document with
44 the affixed electronic notarial certificate.
- 45 (2) The custodian detected no changes or errors in any electronic signature or
46 other information in the electronic document since the affixation of the
47 electronic notarial certificate.
- 48 (3) The custodian personally printed, or supervised the printing of, the electronic
49 document onto paper or other tangible medium.
- 50 (4) The custodian has not made any changes or modifications to the electronic
51 document since the affixation of the electronic notarial certificate to the paper

1 or tangible duplicate of the electronic document with the affixed electronic
2 notarial certificate.

3 (5) The electronic document with the electronic notarial certificate is
4 acknowledged or sworn or affirmed before a notary public.

5 (c) Any document with an attestation in accordance with this section shall be accepted
6 for recording by a register of deeds under G.S. 161-14, provided all other statutory and locally
7 adopted prerequisites for recording have been met.

8 (d) As used in this section, "custodian" shall mean a person with authorized custody of
9 an electronic document with an affixed electronic notarial certification."

10 **SECTION 4.** G.S. 20-30(6), as amended by S.L. 2021-34, reads as rewritten:

11 "(6) To make a color photocopy or otherwise make a color reproduction of a
12 drivers license, learner's permit, or special identification card, unless such
13 color photocopy or other color reproduction was authorized by the
14 Commissioner or is made to comply with G.S. 163-230.2. It shall be lawful to
15 make a black and white photocopy of a drivers license, learner's permit, or
16 special identification card or otherwise make a black and white reproduction
17 of a drivers license, learner's permit, or special identification card. This
18 subdivision does not apply to: ~~(i) a~~ to any of the following:

19 a. A lender that is licensed or otherwise authorized to engage in the
20 lending business in this State; ~~(ii) a State.~~

21 b. A licensed motor vehicle dealer creating, storing, or receiving, in the
22 ordinary course of business, a color image of a drivers license, learner's
23 permit, or special identification card of a borrower or loan applicant;
24 ~~or (iii) a applicant.~~

25 c. A federally insured depository institution or its affiliates creating,
26 storing, or receiving, in the ordinary course of business, a color image
27 of a drivers license, learner's permit, or special identification card of a
28 consumer.

29 d. Performance of a remote notarization act under Part 4A of Article 2 of
30 Chapter 10B of the General Statutes."

31 **SECTION 5.** This act becomes effective January 1, 2022. In order to implement
32 remote notarization on the effective date of this act, the Secretary of State may begin rulemaking
33 to implement Part 4A of Article 2 of Chapter 10B of the General Statutes, as enacted by this act,
34 prior to January 1, 2022, but no temporary or permanent rule shall become effective prior to
35 January 1, 2022.