

Article 2.

Electronic Notary Act.

Part 1. General Provisions.

§ 10B-100. Short title.

This Article is the Electronic Notary Public Act and may be cited by that name. (2005-391, s. 4.)

§ 10B-101. Definitions.

The following definitions apply in this Article:

- (1) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (2) "Electronic Document" means information that is created, generated, sent, communicated, received, or stored by electronic means.
- (3) "Electronic Notarial Act" and "Electronic Notarization" mean an official act by an electronic notary public that involves electronic documents.
- (4) "Electronic Notary Public" and "Electronic Notary" mean a notary public who has registered with the Secretary the capability of performing electronic notarial acts in conformance with this Article.
- (5) "Electronic Notary Seal" and "Electronic Seal" mean information within a notarized electronic document that includes the notary's name, jurisdiction, and commission expiration date, and generally corresponds to data in notary seals used on paper documents.
- (6) "Electronic Signatures" means an electronic symbol or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the document.
- (7) "Notary's Electronic Signature" means those forms of electronic signature which have been approved by the Secretary as authorized in G.S. 10B-125, as an acceptable means for an electronic notary to affix the notary's official signature to an electronic record that is being notarized. (2005-391, s. 4.)

§ 10B-102. Scope of this Article.

Article 1 of this Chapter applies to all acts authorized under this Article unless the provisions of Article 1 directly conflict with the provisions of this Article, in which case provisions of Article 2 shall control. (2005-391, s. 4.)

§ 10B-103. Reserved for future codification purposes.

§ 10B-104. Reserved for future codification purposes.

Part 2. Registration.

§ 10B-105. Qualifications.

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

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

(b) The Secretary may deny a registration as an electronic notary as authorized in G.S. 10B-5(d). (2005-391, s. 4.)

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

(a) Before performing notarial acts electronically, a notary shall register the capability to notarize electronically with the Secretary.

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

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

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

- (1) The applicant's full legal name and the name to be used for commissioning, excluding nicknames.
- (2) The state and county of commissioning of the registrant.
- (3) The expiration date of the registrant's notary commission.
- (4) Proof of successful completion of the course of instruction on electronic notarization as required by this Article.
- (5) A description of the technology the registrant will use to create an electronic signature in performing official acts.
- (6) If the device used to create the registrant's electronic signature was issued or registered through a licensed certification authority, the name of that authority, the source of the license, the starting and expiration dates of the device's term of registration, and any revocations, annulments, or other premature terminations of any registered device of the registrant that was

due to misuse or compromise of the device, with the date, cause, and nature of each termination explained in detail.

(7) The e-mail address of the registrant.

The information contained in a registration under this section is a public record as defined in G.S. 132-1, except for information contained in subsection (7) [subdivision (7)], which shall be considered confidential information and shall not be subject to disclosure except as provided in Chapter 132 of the General Statutes or as provided by rule.

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

(f) Within 10 business days after the change of any registration information required of an electronic notary, the notary shall electronically transmit to the Secretary a notice of the change of information signed with the notary's official electronic signature. (2005-391, s. 4.)

§ 10B-107. Course of instruction.

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

(b) The content of the course and the basis for the examination shall be notarial laws, procedures, technology, and ethics as they pertain to electronic notarization. (2005-391, s. 4.)

§ 10B-108. Fees for registration.

The fee payable to the Secretary for registering or reregistering as an electronic notary is fifty dollars (\$50.00), which shall be in addition to the fee required in G.S. 10B-13. All funds received by the Secretary under this section shall be deposited into the General Fund. (2005-391, s. 4.)

§§ 10B-109 through 10B-114: Reserved for future codification purposes.

Part 3. Electronic Notarial Acts, Powers, and Limitations.

§ 10B-115. Types of electronic notarial acts.

The following types of notarial acts may be performed electronically:

- (1) Acknowledgments;
- (2) Jurats;
- (3) Verifications or proofs; and
- (4) Oaths or affirmations. (2005-391, s. 4.)

§ 10B-116. Prohibitions.

An electronic notarization shall not be performed if the signer of the electronic document:

- (1) Is not in the presence of the electronic notary at the time of notarization; and
- (2) Is not personally known to the notary or identified by the evidence in accordance with other provisions of this Chapter; or
- (3) For any reason set forth in G.S. 10B-20. (2005-391, s. 4.)

§ 10B-117. Notarial components of electronic document.

In performing an electronic notarial act, all of the following components shall be attached to, or logically associated with, the electronic document by the electronic notary, all of which shall be immediately perceptible and reproducible in the electronic record to which the 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 "Electronic Notary Public";
- (3) The words "State of North Carolina";
- (4) The expiration date of the commission;
- (5) The notary's electronic signature; and
- (6) The completed wording of one of the following notarial certificates:
 - a. Acknowledgment;
 - b. Jurat;
 - c. Verification or proof; or
 - d. Oath or affirmation. (2005-391, s. 4.)

§ 10B-118. Maximum fees.

For performing electronic notarial acts, the maximum fees that may be charged by an electronic notary are as follows:

- (1) For acknowledgments, \$10.00 per signature.
- (2) For jurats, \$10.00 per signature.
- (3) For verifications or proofs, \$10.00 per signature.
- (4) For oaths or affirmations, \$10.00 per signature. (2005-391, s. 4.)

§§ 10B-119 through 10B-124: Reserved for future codification purposes.

Part 4. Electronic Notary Records, Maintenance, and Disposition.

§ 10B-125. Electronic signature, electronic seal.

(a) The notary's electronic signature in combination with the electronic notary seal shall be used only for the purpose of performing electronic notarial acts.

(b) The Secretary shall adopt rules necessary to establish standards, procedures, practices, forms, and records relating to a notary's electronic signature

and electronic seal. The notary's electronic seal and electronic signature shall conform to any standards adopted by the Secretary. (2005-391, s. 4.)

§ 10B-126. Security measures.

(a) A notary shall safeguard the notary's electronic signature, the notary's electronic seal, and all other notarial records. Notarial records shall be maintained by the notary, and the notary shall not surrender or destroy the records except as required by a court order or as allowed under rules adopted by the Secretary.

(b) When not in use, the notary shall keep the notary's electronic signature, electronic seal, and all other notarial records secure, under the exclusive control of the notary, and shall not allow them to be used by any other notary or any other person.

(c) A notary shall do the following within 10 days of discovering that the notary's electronic seal or electronic signature has been stolen, lost, damaged, or otherwise rendered incapable of affixing a legible image:

- (1) Inform the appropriate law enforcement agency in the case of theft or vandalism.
- (2) Notify the appropriate register of deeds and the Secretary in writing and signed in the official name in which he or she was commissioned.

(d) The Secretary may adopt rules necessary to insure the integrity, security, and authenticity of electronic notarizations.

(e) The Secretary may require an electronic notary to create and to maintain a record, journal, or entry of each electronic notarial act. The rule-making authority contained in this subsection shall become effective 18 months after December 1, 2005.

(f) The failure of an electronic notary to produce within 10 days of the Department's request any record required by a rule adopted under this section shall result in the suspension of the electronic notary's power to act as a notary under the provision of this Chapter until the Secretary reinstates the notary's commission.

(g) Upon resignation, revocation, or expiration of an electronic notary commission, or death of the notary, all notarial records required by statute or rule shall be delivered to the Secretary. (2005-391, s. 4.)

§ 10B-127. Maintenance of electronic device.

(a) An electronic notary shall take reasonable steps to ensure that any registered device used to create the notary'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's term of office, the notary shall cease performing electronic notarizations until:

- (1) A new device is duly issued or registered to the notary; and

- (2) An electronically signed notice is sent to the Secretary that shall include the starting and expiration dates of any new registration term and any other new information at variance with information in the most recently executed electronic registration form. (2005-391, s. 4.)

§ 10B-128. Disposition of records.

(a) Upon compliance with G.S. 10B-127 and except as provided in subsection (b) of this section, when an electronic notary's commission expires or is resigned or revoked, or when an electronic notary dies, the notary or the notary's duly authorized representative shall erase, delete, or destroy the coding, disk, certificate, card, software, file, or program that enables electronic affixation of the notary's official electronic signature.

(b) A former electronic notary whose previous commission or application was not revoked or denied by the Secretary need not erase, delete, or destroy the coding, disk, certificate, card, software, file, or program enabling electronic affixation of the official electronic signature if he or she is recommissioned and reregistered as an electronic notary using the same electronic signature within three months after commission expiration. (2005-391, s. 4.)

§§ 10B-129 through 10B-134: Reserved for future codification purposes.

Part 5. Certificate Forms.

§ 10B-135. Validity of notarial certificates.

The provisions contained in Article 1, Part 6, of this Chapter, with regard to notarial certificate forms, are applicable for the purposes of this Article. (2005-391, s. 4.)

§ 10B-136. Form of evidence of authority of electronic notarial act.

Electronic evidence of the authenticity of the official electronic signature and electronic seal of an electronic notary of this State, if required, shall be attached to, or logically associated with, a notarized electronic document transmitted to another state or nation and shall be in the form of an electronic certificate of authority signed by the Secretary in conformance with any current and pertinent international treaties, agreements, and conventions subscribed to by the government of the United States. (2005-391, s. 4.)

§ 10B-137. Certificate of authority for electronic notarial act.

(a) An electronic certificate of authority evidencing the authenticity of the official electronic signature and electronic seal of an electronic notary of this State shall contain substantially 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 North 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 seal) of commissioning official)

(b) The Secretary may charge ten dollars (\$10.00) for issuing an electronic certificate of authority. (2005-391, s. 4.)

§§ 10B-138 through 10B-144: Reserved for future codification purposes.

Part 6. Enforcement.

§ 10B-145. Restriction or revocation of registration.

The Secretary or the Secretary's designee shall have the authority to warn, restrict, suspend, or revoke an electronic notary registration for a violation of this Chapter and on any ground for which electronic notary registration may be denied under this Chapter. (2005-391, s. 4.)

§ 10B-146. Wrongful manufacture, distribution, or possession of software or hardware.

(a) Any person who knowingly creates, manufactures, or distributes software for the purpose of allowing a person to act as an electronic notary without being commissioned and registered in accordance with this act shall be guilty of a Class G felony.

(b) Any person who wrongfully obtains, conceals, damages, or destroys the certificate, disk, coding, card, program, software, file, or hardware enabling an electronic notary to affix an official electronic signature is guilty of a Class I felony. (2005-391, s. 4.)