

2021 South Dakota Legislature

Senate Bill 193**AMENDMENT 193A FOR THE INTRODUCED BILL**

1 **An Act to revise certain provisions regarding remote notarization.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1.** That § 18-1-1.1 be AMENDED.

4 **18-1-1.1. Definitions.**

5 Terms in this chapter mean:

6 (1) "Acknowledgment," a declaration by a person before a notarial officer that the
7 person has signed a document for the purpose stated in the document and, if the
8 document is signed by a representative who is:

9 (a) An authorized officer, agent, partner, trustee, or other representative of a
10 person other than a natural person;

11 (b) A public officer, personal representative, guardian, or other representative in
12 the capacity stated in a document;

13 (c) An attorney-in-fact for a natural person; or

14 (d) An authorized representative of another person in any other capacity, that
15 the representative signed the document with proper authority and signed it
16 as the act of the person identified in the document;

17 ~~(2) "Communication technology," an electronic device or process that allows a notarial
18 officer and a person not in the physical presence of the notarial officer to
19 communicate with each other simultaneously by sight and sound~~

20 (2) "Document" or "record," information that is inscribed on a tangible medium or that
21 is stored in an electronic or other medium and is retrievable in perceivable form;

22 (3) "Electronic," any technology using electrical, digital, magnetic, wireless, optical,
23 electromagnetic, or similar capabilities;

24 (4) "Electronic document" or "electronic record," a document created, generated, sent,
25 communicated, received, or stored by electronic means;

- 1 (5) "Identity proofing," a process or service by which a third party provides a notarial
 2 officer with a reasonable means to verify the identity of an individual by a review
 3 of personal information from public or proprietary data sources;
- 4 ~~(3)~~(6) "Notarial act," an act performed with respect to a tangible or electronic record that
 5 a notarial officer may perform under the laws of this state. The term includes taking
 6 an acknowledgment, administering an oath or affirmation, taking a verification on
 7 oath or affirmation, witnessing or attesting a signature, certifying or attesting a
 8 copy, and noting a protest of a negotiable instrument;
- 9 ~~(4)~~~~(3)~~(7) "Notarial officer," a notary public or other person authorized to perform a
 10 notarial act;
- 11 (8) "Official stamp," a seal or physical image affixed to or embossed on a tangible
 12 record or an electronic image attached to or logically associated with an electronic
 13 record;
- 14 (9) "Person," an individual, corporation, business trust, estate, trust, partnership,
 15 limited liability company, association, joint venture, governmental agency, public
 16 corporation, or any other legal or commercial entity;
- 17 ~~(5)~~~~(4)~~(10) "Personal knowledge," a notarial officer has personal knowledge of the identify
 18 identity of an individual appearing before the officer if either:
- 19 (a) The individual is personally known to the officer through dealings sufficient
 20 to provide reasonable certainty that the individual has the identity claimed.
 21 The notarial officer must have known and had regular interactions with the
 22 individual for an extended period of time. A mere acquaintance does not
 23 amount to personal knowledge for purposes of this definition;~~or~~
- 24 (b) The notarial officer represents, or is employed by the firm or business that
 25 represents, the individual as their attorney, real estate agent, auctioneer,
 26 or public accountant, or any combination thereof; or
- 27 (c) The notarial officer can reasonably identify the individual via identity
 28 proofing;
- 29 (11) "Remotely located individual," a person who is not in the physical presence of the
 30 notary;
- 31 (12) "Stamping device," a physical device capable of affixing to or embossing on a
 32 tangible record an official stamp or an electronic device or process capable of
 33 attaching to or logically associating with an electronic record or an official stamp;
- 34 ~~(5)~~(13) "Verification on oath or affirmation," a declaration, made by a person on oath
 35 or affirmation before a notarial officer, that a statement in a document is true;

1 ~~(6)(14)~~ "Video communication technology," an electronic device or process that
2 allows a notarial officer physically located in this state and a remotely located person
3 not in the physical presence of the notarial officer to communicate with each other
4 simultaneously by sight and sound and that, as necessary, makes reasonable
5 accommodation for individuals with vision, hearing, or speech impairments.

6 **Section 2.** That § 18-1-3 be AMENDED.

7 **18-1-3. Seal, Official stamp, oath, and bond filed with secretary of state.**

8 Every notary public before entering upon the duties of his office, shall provide an
9 official ~~seal~~ stamp and file an impression of the same, together with ~~his~~ the notary public's
10 oath and bond, in the Office of the Secretary of State.

11 **Section 3.** That § 18-1-3.1 be AMENDED.

12 **18-1-3.1. Requirements of seal--Commission expiration date required below**
13 **seal.**

14 A notarial officer shall have a ~~seal~~ an official stamp that shall be used for the
15 purpose of acknowledging a document. The ~~seal~~ official stamp shall be of a type approved
16 by the secretary of state and shall contain at least:

- 17 (1) The notarial officer's name;
- 18 (2) The words, South Dakota;
- 19 (3) The words, notary public; and
- 20 (4) A border surrounding the imprint.

21 ~~A seal may be a rubber stamp or a physical device capable of affixing to or embossing~~
22 ~~on a tangible document. A rubber stamp seal shall contain the word, seal.~~

23 A notarial officer shall indicate the date on which the notarial officer's commission
24 expires ~~below the seal~~ official stamp under this section.

25 **Section 4.** That § 18-1-11.1 be AMENDED.

26 **18-1-11.1. Notarial act--Video communication technology--Requirements.**

27 A notarial officer in this state, while located in this state, may perform ~~by means~~
28 ~~of communication technology~~ a notarial act executed on a tangible document by a person
29 ~~who appears before, but is~~ not in the physical presence of the notarial officer, but observed
30 by the notarial officer through means of video communication technology, if the notarial
31 officer:

- 1 (1) Has personal knowledge of the identity of a person through dealings sufficient to
- 2 provide reasonable certainty that the person has the identity being claimed;
- 3 (2) Affixes the notarial officer's signature to the electronic or original tangible document
- 4 executed by the person;
- 5 (3) Indicates in the notarial certificate the remote location of the person executing the
- 6 document;
- 7 (4) Indicates in the notarial certificate that the notarial act involved a statement made
- 8 or a signature executed by a person not in the physical presence of the notarial
- 9 officer, but appearing by means of video communication technology; and
- 10 (5) Is able reasonably to confirm that the document before the notarial officer is the
- 11 same document in which the person made the statement or on which the person
- 12 executed a signature; and
- 13 (6) The notarial officer, or a person acting on behalf of the notarial officer, creates an
- 14 audio-visual recording of the performance of the notarial act.

15 **Section 5.** That a NEW SECTION be added:

16 **18-1-11.2. Notarial act--Video communication technology--Retention of**

17 **notarial act recording.**

18 The notarial officer shall retain an electronic audio-visual recording of the

19 performance of each notarial act involving the use of communication technology for ten

20 years from the date of performance. Upon suspension or revocation of a notarial officer's

21 commission or upon death or incapacity, the notarial officer or guardian, conservator, or

22 personal representative of an incapacitated or deceased notarial officer shall retain a copy

23 of the notarial act for ten years. In lieu of retaining copies as required by this section, the

24 copies may be held by a repository designated by or on behalf of the notarial officer.

25 **Section 6.** That a NEW SECTION be added:

26 **18-1-11.3. Video communication technology--Tamper-evident technologies.**

27 A notarial officer may select one or more tamper-evident technologies to perform

28 notarial acts. A person may not require a notarial officer to perform a notarial act with

29 respect to an electronic document with a technology that the notarial officer has not

30 selected.

31 **Section 7.** That a NEW SECTION be added:

1 **18-4-29. Form--Certificate of acknowledgement--Video communication**
 2 **technology.**

3 The certificate of acknowledgment of a document executed under § 18-1-11.1 shall
 4 be substantially in the following form:

5 State of South Dakota

6 County of _____ ss

7 On this _____ day of _____, in the year _____, before me, _____ (Notary's Name),
 8 the undersigned officer appeared _____ (Signer's Name) with a remote location of _____
 9 (City/State), whom I have personal knowledge of because of my relationship as _____
 10 and whom I positively identified as the person whose name is subscribed to the within
 11 instrument, appeared before me not in my physical presence but by means of video
 12 communication technology, and I observed his/her execution of the same for the purposes
 13 contained therein and confirm that I affix my seal to the same instrument so executed.