

# State of South Dakota

NINETY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 2019

913B0013

HOUSE JUDICIARY ENGROSSED NO. **HB 1272** -  
2/22/2019

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Representatives Johns and Zikmund and Senator Kennedy

1 FOR AN ACT ENTITLED, An Act to provide for remote notarization.

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

3 Section 1. That chapter 18-1 be amended by adding a NEW SECTION to read:

4 Terms in this Act mean:

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

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

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

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

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



1 act of the person identified in the document;

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

5 (3) "Notarial act," an act that a notarial officer may perform under the laws of this state.  
6 The term includes taking an acknowledgment, administering an oath or affirmation,  
7 taking a verification on oath or affirmation, witnessing or attesting a signature,  
8 certifying or attesting a copy, and noting a protest of a negotiable instrument;

9 (4) "Notarial officer," a notary public or other person authorized to perform a notarial  
10 act;

11 (5) "Verification on oath or affirmation," a declaration, made by a person on oath or  
12 affirmation before a notarial officer, that a statement in a document is true.

13 Section 2. That chapter 18-1 be amended by adding a NEW SECTION to read:

14 A notarial officer in this state, while located in this state, may perform by means of  
15 communication technology a notarial act executed on a document by a person who appears  
16 before, but is not in the physical presence of the notarial officer if the notarial officer:

17 (1) Has personal knowledge of the identity of a person through dealings sufficient to  
18 provide reasonable certainty that the person has the identity being claimed;

19 (2) Affixes the notarial officer's signature to the original tangible document executed by  
20 the person;

21 (3) Indicates in the notarial certificate the remote location of the person executing the  
22 document;

23 (4) Indicates in the notarial certificate that the notarial act involved a statement made or  
24 a signature executed by a person not in the physical presence of the notarial officer,

1 but appearing by means of communication technology; and

2 (5) Is able reasonably to confirm that the document before the notarial officer is the same  
3 document in which the person made the statement or on which the person executed  
4 a signature.

5 Section 3. That § 18-1-3.1 be amended to read:

6 18-1-3.1. ~~Each notary public~~ A notarial officer shall have a seal ~~which that~~ shall be used for  
7 the purpose of acknowledging ~~documents~~ a document. The seal shall be of a type approved by  
8 the secretary of state and shall contain at least ~~the following~~:

- 9 (1) The ~~notary's~~ notarial officer's name;
- 10 (2) The words, South Dakota;
- 11 (3) The words, notary public; and
- 12 (4) A border surrounding the imprint.

13 ~~In addition,~~ A seal may be a rubber stamp or a physical device capable of affixing to or  
14 embossing on a tangible document. A rubber stamp ~~seals seal~~ shall ~~have~~ contain the word, seal.

15 ~~If a seal is used by a notary public, the notary public shall write, or print by a device made~~  
16 ~~for such printing, below the seal's imprint or print and if not provided by the form, the words,~~  
17 ~~my commission expires, and shall provide a date therefor~~ A notarial officer shall indicate the  
18 date on which the notarial officer's commission expires below the seal under this section.

19 Section 4. That § 18-1-7 be amended to read:

20 18-1-7. A ~~notary public~~ person who is personally interested directly or indirectly, or as a  
21 stockholder, officer, agent, attorney, or employee of any other person or party to ~~any a~~  
22 transaction concerning which ~~he~~ the person is ~~exercising any~~ performing the function of ~~his~~  
23 ~~office as such~~ a notary public, may make any ~~certificates~~ certificate, take any ~~acknowledgments~~  
24 acknowledgment, administer any ~~oaths~~ oath, or do any other official ~~acts~~ act as ~~such~~ a notary

1 public with the same legal force and effect as if ~~he~~ the person had no such interest except that  
2 ~~he cannot do any of such things in connection with any~~ interest, provided the instrument which  
3 ~~shows or document does not show~~ upon its face that ~~he~~ the person is a principal party ~~thereto~~  
4 to the instrument or document.

5 Section 5. That § 18-1-11 be amended to read:

6 18-1-11. ~~It is a Class 2 misdemeanor for any notary public to affix his~~ A person is guilty of  
7 a Class 2 misdemeanor if the person is a notarial officer who affixes the person's official  
8 signature to documents when any document when the parties to the transaction memorialized  
9 in the document have not appeared before him the person either in-person or in accordance with  
10 section 2 of this Act.

11 Section 6. That § 18-1-12.1 be amended to read:

12 18-1-12.1. ~~It is~~ A person is guilty of a Class 1 misdemeanor ~~for a~~ if the person to act as a  
13 ~~notary public or to affix a signature to a document as a notary public if the person has not first~~  
14 ~~obtained~~ performs a notarial act on any document without first obtaining a commission from the  
15 secretary of state ~~pursuant to this chapter~~ under § 18-1-4.

16 Section 7. That § 18-4-10 be amended to read:

17 18-4-10. The acknowledgment of an instrument performed in the presence of a person  
18 making the acknowledgment must not be taken unless the officer taking it knows or has  
19 satisfactory evidence on the oath or affirmation of a credible witness, that the person making  
20 such acknowledgment is the individual who is described in and who executed the instrument;  
21 or, if executed by a corporation, that the person making such acknowledgment is an officer of  
22 the corporation authorized to execute the instrument.