

AN ACT

ENTITLED, An Act to provide for remote notarization.

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

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

Terms in this Act mean:

- (1) "Acknowledgment," a declaration by a person before a notarial officer that the person has signed a document for the purpose stated in the document and, if the document is signed by a representative who is:
 - (a) An authorized officer, agent, partner, trustee, or other representative of a person other than a natural person;
 - (b) A public officer, personal representative, guardian, or other representative in the capacity stated in a document;
 - (c) An attorney-in-fact for a natural person; or
 - (d) An authorized representative of another person in any other capacity, that the representative signed the document with proper authority and signed it as the act of the person identified in the document;
- (2) "Communication technology," an electronic device or process that allows a notarial officer and a person not in the physical presence of the notarial officer to communicate with each other simultaneously by sight and sound;
- (3) "Notarial act," an act that a notarial officer may perform under the laws of this state. The term includes taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument;
- (4) "Notarial officer," a notary public or other person authorized to perform a notarial act;

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

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

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

- (1) Has personal knowledge of the identity of a person through dealings sufficient to provide reasonable certainty that the person has the identity being claimed;
- (2) Affixes the notarial officer's signature to the original tangible document executed by the person;
- (3) Indicates in the notarial certificate the remote location of the person executing the document;
- (4) Indicates in the notarial certificate that the notarial act involved a statement made or a signature executed by a person not in the physical presence of the notarial officer, but appearing by means of communication technology; and
- (5) Is able reasonably to confirm that the document before the notarial officer is the same document in which the person made the statement or on which the person executed a signature.

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

18-1-3.1. A notarial officer shall have a seal that shall be used for the purpose of acknowledging a document. The seal shall be of a type approved by the secretary of state and shall contain at least:

- (1) The notarial officer's name;
- (2) The words, South Dakota;
- (3) The words, notary public; and

(4) A border surrounding the imprint.

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

A notarial officer shall indicate the date on which the notarial officer's commission expires below the seal under this section.

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

18-1-7. A person who is personally interested directly or indirectly, or as a stockholder, officer, agent, attorney, or employee of any other person or party to a transaction concerning which the person is performing the function of a notary public, may make any certificate, take any acknowledgment, administer any oath, or do any other official act as a notary public with the same legal force and effect as if the person had no interest, provided the instrument or document does not show upon its face that the person is a principal party to the instrument or document.

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

18-1-11. A person is guilty of a Class 2 misdemeanor if the person is a notarial officer who affixes the person's official signature to any document when the parties to the transaction memorialized in the document have not appeared before the person either in-person or in accordance with section 2 of this Act.

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

18-1-12.1. A person is guilty of a Class 1 misdemeanor if the person performs a notarial act on any document without first obtaining a commission from the secretary of state under § 18-1-4.

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

18-4-10. The acknowledgment of an instrument performed in the presence of a person making the acknowledgment must not be taken unless the officer taking it knows or has satisfactory evidence on the oath or affirmation of a credible witness, that the person making such acknowledgment is the

individual who is described in and who executed the instrument; or, if executed by a corporation, that the person making such acknowledgment is an officer of the corporation authorized to execute the instrument.

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I certify that the attached Act
originated in the

HOUSE as Bill No. 1272

Chief Clerk

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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1272

File No. _____

Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State