



2022 South Dakota Legislature

Senate Bill 107

Introduced by: **Senator Wheeler**

1 **An Act to provide for the remote witnessing of certain legal instruments.**

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

3 **Section 1. That a NEW SECTION be added to title 18:**

4 Terms used in this chapter mean:

5 (1) "Electronic," relating to technology having electrical, digital, magnetic, wireless,
6 optical, electromagnetic, or similar capabilities;

7 (2) "Electronic presence," the relationship of two or more individuals in different
8 locations communicating by means of video communication technology;

9 (3) "Instrument," a will, a declaration, a power of attorney, a pre-need cremation
10 authorization, or an anatomical gift or refusal to make an anatomical gift of the
11 individual's body or part thereof;

12 (4) "Video communication technology," an electronic device or process that allows a
13 signer and a remotely located person or persons not in the physical presence of
14 the signer to communicate in real-time simultaneously by sight and sound and that
15 makes any necessary reasonable accommodation for individuals with vision,
16 hearing, or speech impairments;

17 (5) "Signer," an individual who signs or who acknowledges that signature. A signer
18 also includes an individual who directs another person to sign for the signer in the
19 physical presence of the signer.

20 **Section 2. That a NEW SECTION be added to title 18:**

21 A non-holographic will is validly signed when signed in the electronic presence of
22 the testator by two or more individuals who, in the electronic presence of the testator,
23 witnessed either the signing of the will or the testator's acknowledgment of that signature.

24 **Section 3. That a NEW SECTION be added to title 18:**

1 A declaration made pursuant to § 34-12D-2 may be witnessed by two adult
2 individuals in the electronic presence of the declarant.

3 **Section 4. That a NEW SECTION be added to title 18:**

4 A durable power of attorney for health care decisions made pursuant to § 59-7-2.1
5 is validly signed when the signature is witnessed by two other adult individuals in the
6 electronic presence of the principal.

7 **Section 5. That a NEW SECTION be added to title 18:**

8 An anatomical gift or a refusal to make an anatomical gift of the individual's body
9 or part thereof pursuant to subdivisions 34-26-52(b) or 34-26-54(b) may also be
10 witnessed by two adults, at least one of whom is a disinterested witness, who have signed
11 at the request of the signer in the electronic presence of the signer.

12 **Section 6. That a NEW SECTION be added to title 18:**

13 A pre-need cremation authorization made pursuant to § 34-26A-38 may also be
14 witnessed by two witnesses in the electronic presence of the person as authorizing agent.