



2022 South Dakota Legislature  
**Senate Bill 107**  
**ENROLLED**

AN ACT

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

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

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

Terms used in this chapter mean:

- (1) "Electronic," relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;
- (2) "Electronic presence," the relationship of two or more individuals in different locations communicating by means of video communication technology;
- (3) "Instrument," a will, a declaration, a power of attorney, a pre-need cremation authorization, or an anatomical gift or refusal to make an anatomical gift of the individual's body or part thereof;
- (4) "Video communication technology," an electronic device or process that allows a signer and a remotely located person or persons not in the physical presence of the signer to communicate in real-time simultaneously by sight and sound and that makes any necessary reasonable accommodation for individuals with vision, hearing, or speech impairments;
- (5) "Signer," an individual who signs or who acknowledges that signature. A signer also includes an individual who directs another person to sign for the signer in the physical presence of the signer.

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

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

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

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

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

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

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

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

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

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

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

\_\_\_\_\_  
I certify that the attached Act originated in  
the:  
Senate as Bill No. 107

\_\_\_\_\_  
Received at this Executive Office  
this \_\_\_\_ day of \_\_\_\_\_,  
2022 at \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of the Senate

By \_\_\_\_\_  
for the Governor

\_\_\_\_\_  
President of the Senate

The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 2022

Attest:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Governor

**STATE OF SOUTH DAKOTA,**

Office of the Secretary of State

ss.

\_\_\_\_\_  
Speaker of the House

Attest:

Filed \_\_\_\_\_, 2022  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
Secretary of State

Senate Bill No. 107  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

By \_\_\_\_\_  
Asst. Secretary of State