

State of South Dakota

NINETY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2018

673Z0171

SENATE JUDICIARY ENGROSSED NO. **HB 1170** 3/1/2018

Introduced by: Representative Johns and Senator Kennedy

1 FOR AN ACT ENTITLED, An Act to revise law on notarial acts.

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 an individual before a notarial officer that the
6 individual has signed a record for the purpose stated in the record and, if the record
7 is signed in a representative capacity, that the individual signed the record with
8 proper authority and signed it as the act of the individual or entity identified in the
9 record;

10 (2) "Communication technology," an electronic device or process that allows a notary
11 public in this state and a remotely located individual to communicate with each other
12 simultaneously by sight and sound or that, as necessary, makes reasonable
13 accommodations for an individual with vision, hearing, or speech impairments;

14 (3) "Electronic," technology having electrical, digital, magnetic, wireless, optical,
15 electromagnetic, or similar capabilities;



- 1 (4) "Electronic signature," an electronic symbol, sound, or process attached to or
2 logically associated with a record and executed or adopted by an individual with the
3 intent to sign the record;
- 4 (5) "Foreign state," a government other than the United States, a state, or federally
5 recognized Indian tribe;
- 6 (6) "Identity proofing," a process or service by which a third person provides a notary
7 public with a reasonable means to verify the identity of an individual by a review of
8 personal information from public or proprietary data sources;
- 9 (7) "In a representative capacity," acting as:
- 10 (a) An authorized officer, agent, partner, trustee, or other representative for a
11 person other than an individual;
- 12 (b) A public officer, personal representative, guardian, or other representative, in
13 the capacity stated in a record;
- 14 (c) An attorney-in-fact for an individual; or
- 15 (d) An authorized representative of another in any other capacity;
- 16 (8) "Notarial act," an act, whether performed with respect to a tangible or electronic
17 record, that a notarial officer may perform under the laws of South Dakota. The term
18 includes taking an acknowledgment, administering an oath or affirmation, taking a
19 verification on oath or affirmation, witnessing or attesting a signature, certifying or
20 attesting a copy, and noting a protest of a negotiable instrument;
- 21 (9) "Notarial officer," a notary public or other individual authorized to perform a notarial
22 act;
- 23 (10) "Notary public," an individual commissioned to perform a notarial act by the
24 secretary of state;

- 1 (11) "Official stamp," a physical image affixed to or embossed on a tangible record or an
2 electronic image attached to or logically associated with an electronic record;
- 3 (12) "Outside the United States," outside the geographic boundaries of the United States,
4 Puerto Rico, the U.S. Virgin Islands, and any territory, insular possession, or other
5 location subject to the jurisdiction of the United States;
- 6 (13) "Person," any individual, corporation, business trust, statutory trust, estate, trust,
7 partnership, limited liability company, association, joint venture, public corporation,
8 government or governmental subdivision, agency, or instrumentality, or any other
9 legal or commercial entity;
- 10 (14) "Record," any information inscribed on a tangible medium or stored in an electronic
11 or other medium and is retrievable in perceivable form;
- 12 (15) "Remotely located individual," a person who is not in the physical presence of the
13 notary;
- 14 (16) "Sign," with present intent to authenticate or adopt a record to execute or adopt a
15 tangible symbol or to attach to or logically associate with the record an electronic
16 symbol, sound, or process;
- 17 (17) "Signature," a tangible symbol or an electronic signature that evidences the signing
18 of a record;
- 19 (18) "Stamping device," a physical device capable of affixing to or embossing on a
20 tangible record an official stamp or an electronic device or process capable of
21 attaching to or logically associating with an electronic record an official stamp;
- 22 (19) "State," any state of the United States, the District of Columbia, Puerto Rico, the
23 United States Virgin Islands, or any territory or insular possession subject to the
24 jurisdiction of the United States; and

1 (20) "Verification on oath or affirmation," a declaration, made by an individual on oath
2 or affirmation before a notarial officer, that a statement in a record is true.

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

4 This Act applies to any notarial act performed after June 30, 2018.

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

6 If an individual is physically unable to sign a record, the individual may direct another
7 person other than the notarial officer to sign the individual's name on the record. The notarial
8 officer shall insert "Signature affixed by (name of other person) at the direction of (name of
9 individual)" or words of similar import.

10 Section 4. That chapter 18-1 be amended by adding a NEW SECTION to read:

11 A notary public in this state may perform by means of communication technology a notarial
12 act relating to a statement made in or signature executed on a record by a remotely located
13 individual if:

14 (1) The notary public has personal knowledge of the identity of the individual or
15 satisfactory evidence of the identity of the individual as provided in section 6 of this
16 Act;

17 (2) The notarial act relates to an electronic record or signature, or the acknowledgment
18 of a signature on a tangible record;

19 (3) The notary public is reasonably able to identify the record before the notary public
20 as the same record in which the remotely located individual made the statement or
21 on which the remotely located individual executed the signature;

22 (4) The notary public, or a person acting on behalf of the notary public, creates an audio-
23 visual copy of the performance of the notarial act; and

24 (5) If a remotely located individual is located outside the United States:

1 (a) The record is to be filed with or relates to a matter before a court,
2 governmental entity, public official, or other entity under the jurisdiction of
3 the United States, involves property located in the territorial jurisdiction of the
4 United States, or involves a transaction substantially connected with the
5 United States;

6 (b) The act of making a statement or signing the record is not prohibited by the
7 foreign state that the remotely located individual is located.

8 In addition to the methods permitted by law, a notary public has satisfactory evidence of the
9 identity of a remotely located individual if the notary public reasonably can identify the
10 individual by at least two forms of identity proofing.

11 Section 5. That chapter 18-1 be amended by adding a NEW SECTION to read:

12 If a notarial act involves a statement made in or a signature executed on a record by an
13 individual located in a foreign state by means of communication technology, the notarization
14 must also indicate that the individual making the statement or signing the record declared to the
15 notary public that the individual was physically located in a foreign state at the time the notarial
16 act was performed.

17 Section 6. That chapter 18-1 be amended by adding a NEW SECTION to read:

18 The notary public shall retain an electronic audio-visual copy of the performance of each
19 notarial act involving the use of communication technology for ten years from the date of
20 performance. Upon suspension or revocation of a notary public's commission or upon death or
21 incapacity, the notary public or guardian, conservator, or personal representative of an
22 incapacitated or deceased notary public shall retain a copy of the notarial act for ten years. In
23 lieu of retaining copies as required by this section, the copies may be held by a repository
24 designated by or on behalf of the notary public.

1 Section 7. That chapter 18-1 be amended by adding a NEW SECTION to read:

2 If a notarial act involves a statement made or a signature executed on a record by a remotely
3 located individual, the notarization must also indicate the individual was remotely located. The
4 indication required by this section is sufficient if it substantially states, "This notarial act
5 involved a statement made or a signature executed by a remotely located individual using
6 communication technology."

7 Section 8. That chapter 18-1 be amended by adding a NEW SECTION to read:

8 The official stamp of a notary public shall meet the requirements of § 18-1-3.1 and be
9 capable of being copied together with the record to which it is affixed or attached or with which
10 it is logically associated.

11 Section 9. That chapter 18-1 be amended by adding a NEW SECTION to read:

12 A notary public is responsible for the security of the notary public's stamping device and
13 may not allow another individual to use the device to perform a notarial act. On resignation
14 from, or the revocation or expiration of, the notary public's commission, or on the expiration of
15 the date set forth in the stamping device, if any, the notary public shall disable the stamping
16 device by destroying, defacing, damaging, erasing, or securing it against use in a manner that
17 renders it unusable. On the death or adjudication of incompetency of a notary public, the notary
18 public's personal representative or guardian or any other person knowingly in possession of the
19 stamping device shall render it unusable by destroying, defacing, damaging, erasing, or securing
20 it against use in a manner that renders it unusable.

21 Section 10. That chapter 18-1 be amended by adding a NEW SECTION to read:

22 A notary public may select one or more tamper-evident technologies to perform notarial acts
23 with respect to electronic records. A person may not require a notary public to perform a notarial
24 act with respect to an electronic record with a technology that the notary public has not selected.

1 Section 11. That chapter 18-1 be amended by adding a NEW SECTION to read:

2 This Act does not affect the validity or effect of a notarial act performed before July 1, 2018.

3 Section 12. That § 18-1-7 be amended to read:

4 18-1-7. A notary public who is personally interested directly or indirectly, or as a
5 stockholder, officer, agent, attorney, or employee of any person or party to any transaction
6 concerning which ~~he~~ the notary public is exercising any function of ~~his~~ office as ~~such~~ a notary
7 public, may make any certificates, take any acknowledgments, administer any oaths, or do any
8 other official acts as ~~such~~ a notary public with the same legal force and effect as if ~~he~~ the notary
9 public had no ~~such~~ interest except ~~that he cannot do any of such things in connection with any~~
10 if the instrument ~~which or record~~ shows upon its face that ~~he~~ the notary public or the notary
11 public's spouse is a principal party ~~thereto~~.

12 Section 13. That § 18-1-12.2 be amended to read:

13 18-1-12.2. It is a ~~Class 1 misdemeanor~~ Class 2 misdemeanor for a person to affix a signature
14 to a document as a notary public when the ~~person~~ notary public or the notary public's spouse has
15 also signed the document as a party to the transaction ~~proceeding~~.

16 Section 14. That § 18-1-11 be amended to read:

17 18-1-11. It is a Class 2 misdemeanor for any notary public to affix ~~his~~ the notary public's
18 official signature to documents when the parties have not appeared before ~~him~~ the notary public.

19 Section 15. The provisions of this Act do not apply to any document to be filed with the
20 registers of deeds of the state.