



2021 South Dakota Legislature

Senate Bill 193

SENATE JUDICIARY ENGROSSED

Introduced by: **Senator Wheeler**

1 **An Act to revise certain provisions regarding remote notarization.**

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

3 **Section 1.** That § 18-1-1.1 be AMENDED.

4 **18-1-1.1. Definitions.**

5 Terms in this chapter mean:

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

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

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

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

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

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

20 ~~(3)~~—"Notarial act," an act that a notarial officer may perform under the laws of this state.

21 The term includes taking an acknowledgment, administering an oath or affirmation,
22 taking a verification on oath or affirmation, witnessing or attesting a signature,
23 certifying or attesting a copy, and noting a protest of a negotiable instrument;

24 ~~(4)~~(3) "Notarial officer," a notary public or other person authorized to perform a notarial
25 act;

1 ~~(5)~~(4) "Personal knowledge," a notarial officer has personal knowledge of the identity of
 2 an individual appearing before the officer if either:

3 (a) The individual is personally known to the officer through dealings sufficient
 4 to provide reasonable certainty that the individual has the identity claimed.

5 The notarial officer must have known and had regular interactions with the
 6 individual for an extended period of time. A mere acquaintance does not
 7 amount to personal knowledge for purposes of this definition; or

8 (b) The notarial officer represents the individual as their attorney, real estate
 9 agent, auctioneer, or public accountant, or any combination thereof;

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

12 (6) "Video communication technology," an electronic device or process that allows a
 13 notarial officer physically located in this state and a remotely located person not in
 14 the physical presence of the notarial officer to communicate in real-time with each
 15 other simultaneously by sight and sound and that, as necessary, makes reasonable
 16 accommodation for individuals with vision, hearing, or speech impairments.

17 **Section 2.** That § 18-1-11.1 be AMENDED.

18 **18-1-11.1. Notarial act--Video communication technology--Requirements.**

19 A notarial officer in this state, while located in this state, may perform ~~by means~~
 20 ~~of communication technology~~ a notarial act executed on a tangible document by a person
 21 ~~who appears before, but is not~~ in the physical presence of the notarial officer, but observed
 22 by the notarial officer through means of video communication technology, if the notarial
 23 officer:

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

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

28 (3) Indicates in the notarial certificate the remote location of the person executing the
 29 document;

30 (4) Indicates in the notarial certificate that the notarial act involved a statement made
 31 or a signature executed by a person not in the physical presence of the notarial
 32 officer, but appearing by means of video communication technology; and

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

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

5 **18-4-29. Form--Certificate of acknowledgement--Video communication**
 6 **technology.**

7 The certificate of acknowledgment of a document executed under § 18-1-11.1 shall
 8 be substantially in the following form:

9 State of South Dakota

10 County of _____ ss

11 On this _____ day of _____, in the year _____, before me, _____ (Notary's Name),
 12 the undersigned officer appeared _____ (Signer's Name) with a remote location of _____
 13 (City/State), whom I have personal knowledge of because of my relationship as _____
 14 and whom I positively identified as the person whose name is subscribed to the within
 15 instrument, appeared before me not in my physical presence but by means of video
 16 communication technology, and I observed his/her execution of the same for the purposes
 17 contained therein and confirm that I affix my seal to the same instrument so executed.