



2024 South Dakota Legislature

Senate Bill 211

Introduced by: **Senator Wheeler**

1 **An Act to revise notarial acts.**

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

3 **Section 1. That § 7-9-7.4 be AMENDED:**

4 **7-9-7.4.** Unless otherwise provided by law, a paper document that is to be
 5 recorded or filed in the register of deeds' records as provided in this section or other
 6 applicable law ~~shall~~ must contain the original signatures of the parties who execute the
 7 document and, if required to be acknowledged or further proven, original signatures of
 8 the notary public, witnesses, or other officer taking an acknowledgment. ~~However, any~~
 9 Any financing statement filed and recorded pursuant to chapter 57A-9 ~~does is~~ not need
 10 required to contain:

11 ~~(1) The signatures~~ the signature of the debtor or the secured party; or

12 ~~(2) An~~ an acknowledgment.

13 No original signature ~~may be~~ is required for any document to be recorded or filed
 14 in the register of deeds' records if the document ~~is:~~

15 (1) Is attached as an exhibit to an affidavit or other document that has an original
 16 signature that is acknowledged, sworn to with a proper jurat, or proved according
 17 to law;

18 (2) Contains electronic signatures executed and notarized in accordance with the
 19 requirements of section 4 of this Act and is recorded electronically pursuant to
 20 chapter 7-9A; or

21 (3) Is a printed copy of an electronic record containing electronic signatures executed
 22 and notarized in accordance with the requirements of section 4 of this Act and a
 23 certificate acknowledging the authenticity of the copy pursuant to section 7 of this
 24 Act.

25 **Section 2. That § 18-1-1.1 be AMENDED:**

1 **18-1-1.1.** Terms in this chapter mean:

- 2 (1) "Acknowledgment," a declaration by a person before a notarial officer that the
 3 person has signed a document for the purpose stated in the document and, ~~if that~~
 4 the document is signed by a representative who is:
- 5 (a) An authorized officer, agent, partner, trustee, or other representative of a
 6 person other than a natural person;
 - 7 (b) A public officer, personal representative, guardian, or other representative
 8 in the capacity stated in a document;
 - 9 (c) An attorney-in-fact for a natural person; or
 - 10 (d) An authorized representative of another person in any other capacity, that
 11 the representative signed the document with proper authority and signed it
 12 as the act of the person identified in the document;
- 13 (2) "Document" or "record," information that is inscribed on a tangible medium or that
 14 is stored in an electronic or other medium and is retrievable in perceivable form;
- 15 ~~(3)~~ "Identity proofing," a process or service by which a third party provides a notarial
 16 officer with a reasonable means to verify the identity of an individual by review of
 17 personal information from public or proprietary data sources;
- 18 ~~(4)~~ "Notarial act," an act, whether performed with respect to a tangible or electronic
 19 record, that a notarial officer may perform under the laws of this state. The term
 20 includes taking an acknowledgment, administering an oath or affirmation, taking a
 21 verification on oath or affirmation, witnessing or attesting a signature, certifying
 22 or attesting a copy, and noting a protest of a negotiable instrument;
- 23 ~~(3)(5)~~ "Notarial officer," a notary public or other person authorized to perform a notarial
 24 act;
- 25 ~~(4)(6)~~ "Official seal," a seal, stamp, or physical image affixed to or embossed on a tangible
 26 record or an electronic image attached to or logically associated with an electronic
 27 record;
- 28 (7) "Personal knowledge," a notarial officer has personal knowledge of the identity of
 29 an individual appearing before the officer if ~~either~~:
- 30 (a) The individual is personally known to the officer through dealings sufficient
 31 to provide reasonable certainty that the individual has the identity claimed.
 32 The notarial officer must have known and had regular interactions with the
 33 individual for an extended period of time. A mere acquaintance does not
 34 amount to personal knowledge for purposes of this definition; ~~or~~

1 (b) The notarial officer represents the individual as ~~their~~ the individual's
 2 attorney, real estate agent, auctioneer, or public accountant, or any
 3 combination thereof; or

4 (c) The notarial officer can reasonably identify the individual by two different
 5 methods of identity proofing.

6 ~~(5)~~(8) "Remotely located person," a person who is not in the physical presence of the
 7 notary;

8 (9) "Tamper-evident," any change to an electronic record displays evidence of the
 9 change;

10 (10) "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; and

12 ~~(6)~~(11) "Video communication technology," an electronic device or process that allows
 13 a notarial officer physically located in this state and a remotely located person not
 14 in the physical presence of the notarial officer to communicate in real-time with
 15 each other simultaneously by sight and sound and that, as necessary, makes
 16 reasonable accommodation for individuals with vision, hearing, or speech
 17 impairments.

18 **Section 3. That § 18-1-3.1 be AMENDED:**

19 **18-1-3.1.** A notarial officer ~~shall~~ must have ~~a~~ an official seal ~~that shall~~ to be used
 20 for the purpose of acknowledging a document. The seal ~~shall~~ must be ~~of~~ a type approved
 21 by the secretary of state and ~~shall~~ must contain at least:

22 (1) The notarial officer's name;

23 (2) The words, "South Dakota";

24 (3) The words, "notary public"; and

25 (4) ~~A border surrounding the imprint~~ border.

26 ~~A seal may be a rubber stamp or a physical device capable of affixing to or~~
 27 ~~embossing on a tangible document. A rubber~~ Rubber stamp seal shall seals and electronic
 28 seals must contain the ~~word,~~ words and seal within the surrounding border.

29 A notarial officer ~~shall~~ must indicate the date on which the notarial officer's
 30 commission expires below the official seal under this section.

31 **Section 4. That a NEW SECTION be added to chapter 18-1:**

32 A notarial officer in this state, while located in this state, may perform a notarial
 33 act executed on an electronic record by a person not in the physical presence of the

1 notarial officer but observed by the notarial officer through means of video communication
2 technology if the notarial officer:

3 (1) Has personal knowledge, by means of two different methods of identity proofing,
4 that the person has the identity being claimed;

5 (2) Affixes the notarial officer's signature to the electronic record executed by the
6 person;

7 (3) Indicates the remote location of the person executing the document in the notarial
8 certificate pursuant to section 11 of this Act;

9 (4) Indicates in the notarial certificate pursuant to section 11 of this Act that the
10 notarial act involved a statement made or a signature executed by a person not in
11 the physical presence of the notarial officer, but appearing by means of video
12 communication technology, and a tamper-evident electronic notarization system;
13 and

14 (5) Creates an audio-visual copy of the performance of the notarial act.

15 **Section 5. That a NEW SECTION be added to chapter 18-1:**

16 A notarial officer must retain an electronic audio-visual copy of each notarial act
17 involving the use of a tamper-evident notarization system for ten years from the date of
18 the performance. Upon suspension or revocation of a notarial officer's commission, or
19 upon death or incapacity, the notarial officer or the guardian, conservator, or personal
20 representative of the incapacitated or deceased notarial officer must retain an electronic
21 audio-visual copy of each notarial act for ten years. In lieu of retaining copies as required
22 by this section, the copies may be held by a repository designated by or on behalf of the
23 notarial officer.

24 **Section 6. That a NEW SECTION be added to chapter 18-1:**

25 A notarial officer, prior to performing notarial acts with respect to electronic
26 records, must select at least one tamper-evident electronic notarization system with which
27 to place the signature and official seal of the notarial officer on electronic records. A person
28 may not require a notarial officer to perform a notarial act with respect to an electronic
29 record with a system that the notarial officer has not selected. A notarial officer must
30 notify the secretary of state, on forms prescribed by the secretary, of the names of each
31 tamper-evident notarization system used by that notarial officer for the notarization of
32 electronic records.

1 **Section 7. That a NEW SECTION be added to chapter 18-1:**

2 A register of deeds must accept for record a tangible copy of an electronic record
3 containing a notarial certificate as satisfying any requirement that a signature on a record
4 accepted for recording be an original, if the notarial officer executing the notarial certificate
5 certifies the tangible copy is an accurate copy of the electronic record pursuant to section
6 8 of this Act.

7 **Section 8. That a NEW SECTION be added to chapter 18-1:**

8 The certificate authenticating a printed electronic record under section 7 of this Act
9 must be substantially in the following form:

10 I, _____, a notary public, certify that the attached document is an
11 accurate copy of the original electronic record upon which my electronic signature and
12 official seal are inscribed, and that the electronic record was printed by me or under my
13 supervision.

14 I hereunto set my hand and official seal.

15 _____

16 _____

17 Title of officer.

18 **Section 9. That a NEW SECTION be added to chapter 18-1:**

19 The secretary of state may promulgate rules pursuant to chapter 1-26 to:

20 (1) Create standards for online notarial acts in accordance with this Act, including
21 standards for credential analysis, identity proofing, and communication technology
22 used for online notarial acts; and

23 (2) Ensure the integrity, security, and authenticity of online notarial acts in accordance
24 with this Act.

25 **Section 10. That a NEW SECTION be added to chapter 18-1:**

26 The failure of a notarial officer to perform a duty or meet a requirement specified
27 by law does not invalidate a notarial act performed by the notarial officer. The validity of
28 a notarial act does not prevent an aggrieved person from seeking to invalidate the record
29 or transaction that is the subject of the notarial act or from seeking other remedies based
30 on the law of this state or the law of the United States. Nothing in this section validates a

1 purported notarial act performed by an individual who does not have the authority to
2 perform notarial acts.

3 **Section 11. That a NEW SECTION be added to chapter 18-4:**

4 The notarial certificate of a document executed pursuant to section 4 of this Act
5 must be substantially in the following form:

6 State of South Dakota

7 County of _____ ss

8 On this _____ day of _____, in the year _____, before me,

9 _____ (notary's name), the undersigned office appeared _____

10 (signer's name) with a remote location of _____ (city/state), whom I have

11 personal knowledge by identity proofing and whom I positively identified as the person

12 whose name is subscribed to the within instrument, appeared before me not in my physical

13 presence but by means of a tamper-evident electronic notarization system, and I observed

14 his/her execution of the same for the purposes contained therein and confirm that I affix

15 my official seal to the same instrument so executed.