

House File 736

H-1106

1 Amend House File 736 as follows:

2 1. By striking everything after the enacting clause and
3 inserting:

4 <Section 1. Section 9B.1, Code 2019, is amended to read as
5 follows:

6 **9B.1 Short title.**

7 This chapter may be cited as the "*Revised Uniform Law on*
8 *Notarial Acts*" *Acts (2018)*".

9 Sec. 2. Section 9B.2, subsection 10, paragraph b, Code 2019,
10 is amended to read as follows:

11 *b.* ~~"Personal~~ Except as provided in section 9B.14A, "personal
12 *appearance*" does not include appearances which require video,
13 optical, or technology with similar capabilities.

14 Sec. 3. Section 9B.2, Code 2019, is amended by adding the
15 following new subsections:

16 NEW SUBSECTION. 4A. "*Instrument affecting real property*"
17 means a written instrument conveying or encumbering real
18 property including an instrument affecting real estate as
19 defined in section 558.1 or any similar instrument provided in
20 chapter 558.

21 NEW SUBSECTION. 11A. "*Remote facilitator*" means a person
22 who participates in performing a notarial act under section
23 9B.14A, by doing any of the following:

24 *a.* Providing communication technology used by a public
25 notary or remotely located individual.

26 *b.* Creating, transmitting, or retaining audio-visual
27 recordings on behalf of a notary public.

28 Sec. 4. Section 9B.4, Code 2019, is amended by adding the
29 following new subsection:

30 NEW SUBSECTION. 2A. A notarial officer may certify that a
31 tangible copy of an electronic record is an accurate copy of
32 the electronic record as provided in section 9B.14A.

33 Sec. 5. Section 9B.6, Code 2019, is amended to read as
34 follows:

35 **9B.6 Personal appearance required.**

HF736.1465 (1) 88

(amending this HF 736 to CONFORM to SF 475)

1 1. If a notarial act relates to a statement made in or
2 a signature executed on a record, the individual making the
3 statement or executing the signature shall appear personally
4 before the notarial officer.

5 2. This section is satisfied by a remotely located
6 individual using communication technology to appear before a
7 notary public as provided in section 9B.14A.

8 Sec. 6. NEW SECTION. **9B.14A Notarial act performed for**
9 **remotely located individual.**

10 1. As used in this section unless the context otherwise
11 requires:

12 *a.* "Communication technology" means an electronic device or
13 process that does all of the following:

14 (1) Allows a notary public and a remotely located individual
15 to communicate with each other simultaneously by sight and
16 sound.

17 (2) When necessary and consistent with other applicable
18 law, facilitates communication with a remotely located
19 individual who has a vision, hearing, or speech impairment.

20 *b.* "Foreign state" means a jurisdiction other than the
21 United States, a state, or a federally recognized Indian tribe.

22 *c.* "Identity proofing" means a process or service by which
23 a third person provides a notary public with a means to verify
24 the identity of a remotely located individual by a review of
25 personal information from public or private data sources.

26 *d.* "Outside the United States" means a location outside
27 the geographic boundaries of the United States, Puerto Rico,
28 the United States Virgin Islands, and any territory, insular
29 possession, or other location subject to the jurisdiction of
30 the United States.

31 *e.* "Remotely located individual" means an individual who is
32 not in the physical presence of the notary public who performs
33 a notarial act under subsection 3.

34 2. A remotely located individual may comply with section
35 9B.6 by using communication technology to appear before a

1 notary public.

2 3. A notary public located in this state may perform a
3 notarial act using communication technology for a remotely
4 located individual if all of the following applies:

5 a. The notary public has any of the following:

6 (1) Personal knowledge under section 9B.7, subsection 1, of
7 the identity of the individual.

8 (2) Satisfactory evidence of the identity of the remotely
9 located individual by oath or affirmation from a credible
10 witness appearing before the notary public under section 9B.7,
11 subsection 2, or this section.

12 (3) Obtained satisfactory evidence of the identity of the
13 remotely located individual by using at least two different
14 types of identity proofing.

15 b. The notary public is able reasonably to confirm that a
16 record before the notary public is the same record in which the
17 remotely located individual made a statement or on which the
18 individual executed a signature.

19 c. The notary public, or a person acting on behalf of
20 the notary public, creates an audio-visual recording of the
21 performance of the notarial act.

22 d. For a remotely located individual located outside the
23 United States, all of the following applies:

24 (1) The record complies with any of the following:

25 (a) Is to be filed with or relates to a matter before a
26 public official or court, governmental entity, or other entity
27 subject to the jurisdiction of the United States.

28 (b) Involves property located in the territorial
29 jurisdiction of the United States or involves a transaction
30 substantially connected with the United States.

31 (2) The act of making the statement or signing the record
32 is not prohibited by the foreign state in which the remotely
33 located individual is located.

34 4. If a notarial act is performed under this section, the
35 certificate of notarial act required by section 9B.15 and the

1 short-form certificate provided in section 9B.16 must indicate
2 that the notarial act was performed using communication
3 technology.

4 5. A short-form certificate provided in section 9B.16 for a
5 notarial act subject to this section is sufficient if any of
6 the following applies:

7 a. It complies with rules adopted under subsection 8,
8 paragraph "a".

9 b. It is in the form provided in section 9B.16 and contains
10 a statement substantially as follows: "This notarial act
11 involved the use of communication technology".

12 6. A notary public, a guardian, conservator, or agent of
13 a notary public, or a personal representative of a deceased
14 notary public shall retain the audio-visual recording created
15 under subsection 3, paragraph "c", or cause the recording
16 to be retained by a repository designated by or on behalf
17 of the person required to retain the recording. Unless a
18 different period is required by rule adopted under subsection
19 8, paragraph "d", the recording must be retained for a period of
20 at least ten years after the recording is made.

21 7. Before a notary public performs the notary public's
22 initial notarial act under this section, the notary public
23 must notify the secretary of state that the notary public will
24 be performing notarial acts with respect to remotely located
25 individuals and identify the technologies the notary public
26 intends to use. If the secretary of state has established
27 standards under subsection 8 and section 9B.27 for approval
28 of communication technology or identity proofing, the
29 communication technology and identity proofing must conform to
30 the standards.

31 8. In addition to adopting rules under section 9B.27, the
32 secretary of state may adopt rules under this section regarding
33 performance of a notarial act. The rules may do all of the
34 following:

35 a. Prescribe the means and process, including training

HF736.1465 (1) 88

(amending this HF 736 to CONFORM to SF 475)

da/jh

1 requirements, of performing a notarial act involving a remotely
2 located individual using communication technology.

3 *b.* Establish standards for communication technology and
4 identity proofing.

5 *c.* Establish requirements or procedures to approve providers
6 of communication technology and the process of identity
7 proofing.

8 *d.* Establish standards and a period for the retention of an
9 audio-visual recording created under subsection 3, paragraph
10 "*c*".

11 9. Before adopting, amending, or repealing a rule governing
12 performance of a notarial act with respect to a remotely
13 located individual, the secretary of state must consider all
14 of the following:

15 *a.* The most recent standards regarding the performance of
16 a notarial act with respect to a remotely located individual
17 promulgated by national standard-setting organizations and the
18 recommendations of the national association of secretaries of
19 state.

20 *b.* Standards, practices, and customs of other jurisdictions
21 that have laws substantially similar to this section.

22 *c.* The views of governmental officials and entities and
23 other interested persons.

24 10. By allowing its communication technology or identity
25 proofing to facilitate a notarial act for a remotely located
26 individual or by providing storage of the audio-visual
27 recording created under subsection 3, paragraph "*c*", the
28 provider of the communication technology, identity proofing,
29 or storage appoints the secretary of state as the provider's
30 agent for service of process in any civil action in this state
31 related to the notarial act.

32 10A. A document purporting to convey or encumber real
33 property that has been recorded by the county recorder for the
34 jurisdiction in which the real property is located, although
35 the document may not have been certified according to this

1 section, shall give the same notice to third persons and be
2 effective from the time of recording as if the document had
3 been certified according to this section.

4 10B. A notary public who performs a notarial act under this
5 section must be duly commissioned under and remain subject to
6 the requirements of section 9B.21 and all other applicable
7 requirements of this chapter.

8 Sec. 7. NEW SECTION. 9B.14B Remote facilitator.

9 To be eligible to directly facilitate a notarial act using
10 communication technology for a remotely located individual as
11 provided in section 9B.14A, a remote facilitator must designate
12 and continuously maintain in this state one of the following:

- 13 1. Its usual place of business in this state.
- 14 2. A registered office, which need not be a place of its
15 activity in this state, or a registered agent for service of
16 process, as required by the secretary of state. In addition,
17 the remote facilitator shall file a foreign entity authority
18 statement with the secretary of state. The statement shall
19 describe the current street and mailing address of the
20 registered office or the name and current street and mailing
21 address of the remote facilitator's registered agent.

22 Sec. 8. NEW SECTION. 9B.14C Use of information.

23 1. a. As used in this section, unless the context
24 otherwise requires, "*personally identifiable information*" means
25 information about or pertaining to an individual in a record
26 which identifies the individual, and includes information that
27 can be used to distinguish or trace an individual's identity,
28 either alone or when combined with other information.

29 b. "*Personally identifiable information*" includes but is
30 not limited to a person's photograph, social security number,
31 driver's license number, name, address, and telephone number.

32 2. A notary public or a remote facilitator shall not sell,
33 offer for sale, use, or transfer to another person personally
34 identifiable information collected in the course of performing
35 a notarial act for any purpose other than as follows:

1 *a.* As required to perform the notarial act.

2 *b.* As necessary to effect, administer, enforce, service, or
3 process the transaction for which the personally identifiable
4 information was provided.

5 3. Subsection 2 does not apply to the transfer of personally
6 identifiable information to another person in any of the
7 following circumstances:

8 *a.* Upon written consent of the person for the use or release
9 of that person's personally identifiable information.

10 *b.* In response to a court order, subpoena, or other legal
11 process compelling disclosure.

12 *c.* As part of a change in the form of a business entity's
13 organization or a change in the control of a business
14 entity, including as a result of an acquisition, merger, or
15 consolidation. However, any reorganized or successor business
16 entity shall comply with the same requirements as provided in
17 subsection 2.

18 4. A person who violates this section is guilty of a simple
19 misdemeanor.

20 Sec. 9. Section 9B.20, Code 2019, is amended by adding the
21 following new subsection:

22 NEW SUBSECTION. 2A. The office of the recorder of a county
23 in which real estate is located may accept for recording
24 a tangible copy of an electronic record of an instrument
25 affecting real property, if the electronic record is evidenced
26 by a certificate of a notarial act pursuant to section 9B.15.

27 Sec. 10. RULEMAKING. The secretary of state shall
28 prepare a notice of intended action for the adoption of
29 rules necessary to administer this Act as provided in section
30 9B.27. The notice of intended action shall be submitted to
31 the administrative rules coordinator and the administrative
32 code editor as soon as possible after July 1, 2020. However,
33 nothing in this section authorizes the secretary of state to
34 adopt rules under section 17A.4, subsection 3, or section
35 17A.5, subsection 2, paragraph "b".

HF736.1465 (1) 88

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da/jh

