

House Study Bill 167 - Introduced

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
STATE GOVERNMENT BILL BY
CHAIRPERSON KAUFMANN)

A BILL FOR

1 An Act providing for notarial acts, including by providing for
2 the use of electronic media.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 9B.1, Code 2019, is amended to read as
2 follows:

3 **9B.1 Short title.**

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

6 Sec. 2. Section 9B.2, subsection 10, Code 2019, is amended
7 by striking the subsection.

8 Sec. 3. Section 9B.4, Code 2019, is amended by adding the
9 following new subsection:

10 NEW SUBSECTION. 3. A notarial officer may certify that a
11 tangible copy of an electronic record is an accurate copy of
12 the electronic record.

13 Sec. 4. NEW SECTION. **9B.14A Notarial act performed for**
14 **remotely located individual.**

15 1. As used in this section unless the context otherwise
16 requires:

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

19 (1) Allows a notary public and a remotely located individual
20 to communicate with each other simultaneously by sight and
21 sound.

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

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

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

31 *d. "Outside the United States"* means a location outside
32 the geographic boundaries of the United States, Puerto Rico,
33 the United States Virgin Islands, and any territory, insular
34 possession, or other location subject to the jurisdiction of
35 the United States.

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

4 2. A remotely located individual may comply with section
5 9B.6 by using communication technology to appear before a
6 notary public.

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

10 *a.* The notary public has any of the following:

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

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

17 (3) Obtained satisfactory evidence of the identity of the
18 remotely located individual by using at least two different
19 types of identity proofing.

20 *b.* The notary public is able reasonably to confirm that a
21 record before the notary public is the same record in which the
22 remotely located individual made a statement or on which the
23 individual executed a signature.

24 *c.* The notary public, or a person acting on behalf of
25 the notary public, creates an audio-visual recording of the
26 performance of the notarial act.

27 *d.* For a remotely located individual located outside the
28 United States, all of the following applies:

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

30 (i) Is to be filed with or relates to a matter before a
31 public official or court, governmental entity, or other entity
32 subject to the jurisdiction of the United States.

33 (ii) Involves property located in the territorial
34 jurisdiction of the United States or involves a transaction
35 substantially connected with the United States.

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

4 4. If a notarial act is performed under this section, the
5 certificate of notarial act required by section 9B.15 and the
6 short-form certificate provided in section 9B.16 must indicate
7 that the notarial act was performed using communication
8 technology.

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

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

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

17 6. A notary public, a guardian, conservator, or agent of
18 a notary public, or a personal representative of a deceased
19 notary public shall retain the audio-visual recording created
20 under subsection 3, paragraph "c", or cause the recording
21 to be retained by a repository designated by or on behalf
22 of the person required to retain the recording. Unless a
23 different period is required by rule adopted under subsection
24 8, paragraph "d", the recording must be retained for a period of
25 at least ten years after the recording is made.

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

1 8. In addition to adopting rules under section 9B.27, the
2 secretary of state may adopt rules under this section regarding
3 performance of a notarial act. The rules may do all of the
4 following:

5 a. Prescribe the means of performing a notarial act
6 involving a remotely located individual using communication
7 technology.

8 b. Establish standards for communication technology and
9 identity proofing.

10 c. Establish requirements or procedures to approve providers
11 of communication technology and the process of identity
12 proofing.

13 d. Establish standards and a period for the retention of an
14 audio-visual recording created under subsection 3, paragraph
15 "c".

16 9. Before adopting, amending, or repealing a rule governing
17 performance of a notarial act with respect to a remotely
18 located individual, the secretary of state must consider all
19 of the following:

20 a. The most recent standards regarding the performance of
21 a notarial act with respect to a remotely located individual
22 promulgated by national standard-setting organizations and the
23 recommendations of the national association of secretaries of
24 state.

25 b. Standards, practices, and customs of other jurisdictions
26 that have laws substantially similar to this section.

27 c. The views of governmental officials and entities and
28 other interested persons.

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

1 related to the notarial act.

2 Sec. 5. Section 9B.20, Code 2019, is amended by adding the
3 following new subsection:

4 NEW SUBSECTION. 3. A county recorder may accept for
5 recording a tangible copy of an electronic record containing
6 a notarial certificate as satisfying any requirement that a
7 record accepted for recording be an original, if the notarial
8 officer executing the notarial certificate certifies that the
9 tangible copy is an accurate copy of the electronic record.

10

EXPLANATION

11

The inclusion of this explanation does not constitute agreement with
12 the explanation's substance by the members of the general assembly.

12

13 GENERAL. This bill amends Code chapter 9B, the "Revised
14 Uniform Law on Notarial Acts" (RULONA), enacted by the general
15 assembly in 2012 (2012 Acts, chapter 1050), which is based on a
16 model Act proposed by the national conference of commissioners
17 on uniform state laws (commissioners) in 2010. The Code
18 chapter governs a notary public (an individual commissioned
19 to perform a notarial act by the secretary of state) or other
20 notarial officer (a statutory authorized individual such as a
21 judge) who performs a specific official act such as attesting
22 to some fact which often involves an individual's statement or
23 signing of a record presented by an individual (Code section
24 9B.2). Such an individual must appear personally before the
25 notarial officer (Code section 9B.6). The record may either be
26 tangible or electronic. A notary public who elects to perform
27 a notarial act involving an electronic record must notify the
28 secretary of state regarding the tamper-proof technology that
29 the notary public will use (Code section 9B.20).

30 BILL'S PROVISIONS. The bill includes amendments proposed
31 to the uniform Act by the commissioners in 2018 and referred
32 to as "RULONA (2018)", by allowing a notary public to perform
33 a notarial act remotely by utilizing audio-visual technology.
34 The bill strikes a provision in the Code chapter, not part of
35 the uniform Act, that defines the phrase "personal appearance"

1 to exclude an appearance which uses video or optical technology
2 (Code section 2B.2(10)). Under the bill, a public notary who
3 performs a notarial act remotely must comply with certain
4 standards, including rules adopted by the secretary of
5 state. This includes keeping the audio-video recording of
6 the notarization for at least 10 years. If a public notary
7 complies with these standards, the personal appearance
8 requirement is deemed satisfied. The bill also provides that a
9 county recorder may accept a tangible copy of the electronic
10 record, if a notarial officer certifies that the copy is
11 accurate.