

Senate File 475 - Introduced

SENATE FILE 475
BY COMMITTEE ON STATE
GOVERNMENT

(SUCCESSOR TO SSB 1116)

A BILL FOR

1 An Act providing for notarial acts involving real estate
2 transactions, including by the use of electronic media,
3 providing penalties, and including effective date
4 provisions.

5 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, Code 2019, is amended by adding the
7 following new subsection:

8 NEW SUBSECTION. 4A. "*Instrument affecting real property*"
9 means a written instrument conveying or encumbering real
10 property including an instrument affecting real estate as
11 defined in section 558.1 or any similar instrument provided in
12 chapter 558.

13 Sec. 3. Section 9B.2, subsection 10, paragraph b, Code 2019,
14 is amended to read as follows:

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

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

20 NEW SUBSECTION. 3. A notarial officer may certify that a
21 tangible copy of an electronic record is an accurate copy of
22 the electronic record as provided in section 9B.14A.

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

25 **9B.6 Personal appearance required.**

26 If a notarial act relates to a statement made in or a
27 signature executed on a record, the individual making the
28 statement or executing the signature shall appear personally
29 before the notarial officer. This section is satisfied by a
30 remotely located individual using communication technology to
31 appear before a notary public as provided in section 9B.14A.

32 Sec. 6. NEW SECTION. **9B.14A Notarial act performed for**
33 **remotely located individual — instruments affecting real**
34 **property.**

35 1. As used in this section unless the context otherwise

1 requires:

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

4 (1) Allows a notary public and a remotely located individual
5 to communicate with each other simultaneously by sight and
6 sound.

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

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

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

16 *d. "Outside the United States"* means a location outside
17 the geographic boundaries of the United States, Puerto Rico,
18 the United States Virgin Islands, and any territory, insular
19 possession, or other location subject to the jurisdiction of
20 the United States.

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

24 2. A remotely located individual may comply with section
25 9B.6 by using communication technology to appear before a
26 notary public.

27 3. A notary public located in this state may perform a
28 notarial act to certify an instrument affecting real property
29 for filing and recording in the office of the recorder of the
30 county in which the real property is located as provided in
31 chapter 558, by using communication technology for a remotely
32 located individual, if all of the following applies:

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

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

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

5 (3) Obtained satisfactory evidence of the identity of the
6 remotely located individual by using at least two different
7 types of identity proofing.

8 *b.* The notary public is able reasonably to confirm that a
9 record before the notary public is the same record in which the
10 remotely located individual made a statement or on which the
11 individual executed a signature.

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

15 *d.* For a remotely located individual located outside the
16 United States, the act of making the statement or signing the
17 record is not prohibited by the foreign state in which the
18 remotely located individual is located.

19 4. If a notarial act is performed under this section, the
20 certificate of notarial act required by section 9B.15 and the
21 short-form certificate provided in section 9B.16 must indicate
22 that the notarial act was performed using communication
23 technology.

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

27 *a.* It complies with rules adopted under subsection 8,
28 paragraph "a".

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

32 6. A notary public, a guardian, conservator, or agent of
33 a notary public, or a personal representative of a deceased
34 notary public shall retain the audio-visual recording created
35 under subsection 3, paragraph "c", or cause the recording

1 to be retained by a repository designated by or on behalf
2 of the person required to retain the recording. Unless a
3 different period is required by rule adopted under subsection
4 8, paragraph "d", the recording must be retained for a period of
5 at least ten years after the recording is made.

6 7. Before a notary public performs the notary public's
7 initial notarial act under this section, the notary public
8 must notify the secretary of state that the notary public will
9 be performing notarial acts with respect to remotely located
10 individuals and identify the technologies the notary public
11 intends to use. If the secretary of state has established
12 standards under subsection 8 and section 9B.27 for approval
13 of communication technology or identity proofing, the
14 communication technology and identity proofing must conform to
15 the standards.

16 8. In addition to adopting rules under section 9B.27, the
17 secretary of state may adopt rules under this section regarding
18 performance of a notarial act. The rules may do all of the
19 following:

20 a. Prescribe the means and process, including training
21 requirements, of performing a notarial act involving a remotely
22 located individual using communication technology.

23 b. Establish standards for communication technology and
24 identity proofing.

25 c. Establish requirements or procedures to approve providers
26 of communication technology and the process of identity
27 proofing.

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

31 9. Before adopting, amending, or repealing a rule governing
32 performance of a notarial act with respect to a remotely
33 located individual, the secretary of state must consider all
34 of the following:

35 a. The most recent standards regarding the performance of

1 a notarial act with respect to a remotely located individual
2 promulgated by national standard-setting organizations and the
3 recommendations of the national association of secretaries of
4 state.

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

7 *c.* The views of governmental officials and entities and
8 other interested persons.

9 10. By allowing its communication technology or identity
10 proofing to facilitate a notarial act for a remotely located
11 individual or by providing storage of the audio-visual
12 recording created under subsection 3, paragraph "c", the
13 provider of the communication technology, identity proofing,
14 or storage appoints the secretary of state as the provider's
15 agent for service of process in any civil action in this state
16 related to the notarial act.

17 10A. A document purporting to convey or encumber real
18 property that has been recorded by the county recorder for the
19 jurisdiction in which the real property is located, although
20 the document may not have been certified according to this
21 section, shall give the same notice to third persons and be
22 effective from the time of recording as if the document had
23 been certified according to this section.

24 **Sec. 7. NEW SECTION. 9B.14B Use of information.**

25 1. As used in this section, unless the context otherwise
26 requires:

27 *a.* (1) "*Personally identifiable information*" means
28 information about or pertaining to an individual in a record
29 which identifies the individual, and includes information that
30 can be used to distinguish or trace an individual's identity,
31 either alone or when combined with other information.

32 (2) "*Personally identifiable information*" includes but is
33 not limited to a person's photograph, social security number,
34 driver's license number, name, address, and telephone number.

35 *b.* "*Remote facilitator*" means a person who participates in

1 performing a notarial act under section 9B.14A, by doing any
2 of the following:

3 (1) Providing communication technology used by a public
4 notary or remotely located individual.

5 (2) Creating, transmitting, or retaining audio-visual
6 recordings on behalf of a notary public.

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

11 a. As required to perform the notarial act.

12 b. As necessary to effect, administer, enforce, service, or
13 process the transaction for which the personally identifiable
14 information was provided.

15 3. Subsection 2 does not apply to the transfer of personally
16 identifiable information to another person in any of the
17 following circumstances:

18 a. Upon written consent of the person for the use or release
19 of that person's personally identifiable information.

20 b. In response to a court order, subpoena, or other legal
21 process compelling disclosure.

22 c. As part of a change in the form of a business entity's
23 organization or a change in the control of a business
24 entity, including as a result of an acquisition, merger, or
25 consolidation. However, any reorganized or successor business
26 entity shall comply with the same requirements as provided in
27 subsection 2.

28 4. A person who violates this section is guilty of a simple
29 misdemeanor.

30 Sec. 8. Section 9B.20, Code 2019, is amended by adding the
31 following new subsection:

32 NEW SUBSECTION. 3. The office of the recorder of the county
33 in which the real property is located may accept for recording
34 a tangible copy of an electronic record of an instrument
35 affecting the real property containing a notarial certificate

1 as satisfying any requirement that a record accepted for
2 recording be an original, if the notarial officer executing the
3 notarial certificate certifies that the tangible copy is an
4 accurate copy of the electronic record.

5 Sec. 9. EFFECTIVE DATE. This Act takes effect July 1, 2020.

6 EXPLANATION

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

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

26 BILL'S PROVISIONS. The bill includes amendments proposed
27 to the uniform Act by the commissioners in 2018 and referred
28 to as "RULONA (2018)", by allowing a notary public to
29 perform a notarial act remotely by utilizing audio-visual
30 technology. However, the bill only applies to the filing of
31 instruments affecting real property with a county recorder,
32 and specifically instruments conveying or encumbering real
33 property. Under the bill, a public notary who performs a
34 notarial act remotely must comply with certain standards,
35 including rules adopted by the secretary of state. This

1 includes keeping the audio-video recording of the notarization
2 for at least 10 years. A document purporting to convey or
3 encumber real property that has been recorded provides notice
4 to third persons regardless of whether it has been properly
5 certified. The bill also provides that a county recorder may
6 accept a tangible copy of the electronic record, if a notarial
7 officer certifies that the copy is accurate.

8 RESTRICTION ON USE OF PERSONALLY IDENTIFIABLE INFORMATION.

9 The bill creates a nonuniform provision that restricts a
10 public notary or person involved in performing a notarial act
11 electronically from using personally identifiable information
12 that is contained in a created record subject to specified
13 exceptions in the bill. A person who violates this provision
14 of the bill commits a simple misdemeanor.

15 EFFECTIVE DATE. The bill takes effect on July 1, 2020.