

Senate File 475 - Reprinted

SENATE FILE 475
BY COMMITTEE ON STATE
GOVERNMENT

(SUCCESSOR TO SSB 1116)

(As Amended and Passed by the Senate April 1, 2019)

A BILL FOR

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

4 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, paragraph b, Code 2019,
7 is amended to read as follows:

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

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

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

18 NEW SUBSECTION. 11A. "*Remote facilitator*" means a person
19 who participates in performing a notarial act under section
20 9B.14A, by doing any of the following:

21 *a.* Providing communication technology used by a public
22 notary or remotely located individual.

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

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

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

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

32 **9B.6 Personal appearance required.**

33 1. If a notarial act relates to a statement made in or
34 a signature executed on a record, the individual making the
35 statement or executing the signature shall appear personally

1 before the notarial officer.

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

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

7 1. As used in this section unless the context otherwise
8 requires:

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

11 (1) Allows a notary public and a remotely located individual
12 to communicate with each other simultaneously by sight and
13 sound.

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

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

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

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

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

31 2. A remotely located individual may comply with section
32 9B.6 by using communication technology to appear before a
33 notary public.

34 3. A notary public located in this state may perform a
35 notarial act using communication technology for a remotely

1 located individual if all of the following applies:

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

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

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

9 (3) Obtained satisfactory evidence of the identity of the
10 remotely located individual by using at least two different
11 types of identity proofing.

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

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

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

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

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

25 (b) Involves property located in the territorial
26 jurisdiction of the United States or involves a transaction
27 substantially connected with the United States.

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

31 4. If a notarial act is performed under this section, the
32 certificate of notarial act required by section 9B.15 and the
33 short-form certificate provided in section 9B.16 must indicate
34 that the notarial act was performed using communication
35 technology.

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

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

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

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

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

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

32 a. Prescribe the means and process, including training
33 requirements, of performing a notarial act involving a remotely
34 located individual using communication technology.

35 b. Establish standards for communication technology and

1 identity proofing.

2 *c.* Establish requirements or procedures to approve providers
3 of communication technology and the process of identity
4 proofing.

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

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

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

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

19 *c.* The views of governmental officials and entities and
20 other interested persons.

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

29 10A. A document purporting to convey or encumber real
30 property that has been recorded by the county recorder for the
31 jurisdiction in which the real property is located, although
32 the document may not have been certified according to this
33 section, shall give the same notice to third persons and be
34 effective from the time of recording as if the document had
35 been certified according to this section.

1 10B. A notary public who performs a notarial act under this
2 section must be duly commissioned under and remain subject to
3 the requirements of section 9B.21 and all other applicable
4 requirements of this chapter.

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

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

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

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

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

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

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

33 a. As required to perform the notarial act.

34 b. As necessary to effect, administer, enforce, service, or
35 process the transaction for which the personally identifiable

1 information was provided.

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

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

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

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

15 4. A person who violates this section is guilty of a simple
16 misdemeanor.

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

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

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

33 Sec. 11. EFFECTIVE DATE.

34 1. Except as provided in subsection 2, this Act takes effect
35 July 1, 2020.

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1 2. The section of this Act requiring the secretary of state
2 to prepare a notice of intended action for the adoption of
3 rules necessary to administer this Act shall take effect upon
4 enactment.