SENATE FILE 475
BY COMMITTEE ON STATE GOVERNMENT

(SUCCESSOR TO SSB 1116)

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

A BILL FOR

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

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

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

9B.1 Short title.

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

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

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

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

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

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

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

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

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

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

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

9B.6 Personal appearance required.

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

before the notarial officer.

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

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

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

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

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

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

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

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

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

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

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

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

located individual if all of the following applies:

a. The notary public has any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. Establish standards for communication technology and

identity proofing.

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

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

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

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

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

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

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

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

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

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

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

1. Its usual place of business in this state.

2. A registered office, which need not be a place of its activity in this state, or a registered agent for service of process, as required by the secretary of state. In addition, the remote facilitator shall file a foreign entity authority statement with the secretary of state. The statement shall describe the current street and mailing address of the registered office or the name and current street and mailing address of the remote facilitator's registered agent.

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

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

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

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

a. As required to perform the notarial act.

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

information was provided.

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

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

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

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

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

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

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

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

Sec. 11. EFFECTIVE DATE.

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

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