

IN THE SENATE

SENATE BILL NO. 1111

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE REVISED UNIFORM LAW ON NOTARIAL ACTS; AMENDING THE HEADING
2 FOR CHAPTER 1, TITLE 51, IDAHO CODE; AMENDING SECTION 51-101, IDAHO
3 CODE, TO REVISE THE SHORT TITLE; AMENDING SECTION 51-104, IDAHO CODE,
4 TO PROVIDE THAT A NOTARIAL OFFICER MAY CERTIFY THAT A TANGIBLE COPY OF
5 AN ELECTRONIC RECORD IS AN ACCURATE COPY; AMENDING CHAPTER 1, TITLE 51,
6 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 51-114A, IDAHO CODE, TO DE-
7 FINE TERMS, TO PROVIDE FOR COMPLIANCE BY A REMOTELY LOCATED INDIVIDUAL,
8 TO AUTHORIZE A NOTARY PUBLIC TO PERFORM A NOTARIAL ACT FOR A REMOTELY LO-
9 CATED INDIVIDUAL IN CERTAIN INSTANCES, TO PROVIDE FOR CERTIFICATION FOR
10 A NOTARIAL ACT FOR A REMOTELY LOCATED INDIVIDUAL, TO PROVIDE FOR A SHORT
11 FORM CERTIFICATE, TO PROVIDE THAT CERTAIN RECORDS SHALL BE RETAINED, TO
12 PROVIDE FOR NOTIFICATION TO THE SECRETARY OF STATE, AND TO PROVIDE RULE-
13 MAKING AUTHORITY WITH CERTAIN CONSIDERATIONS; AMENDING SECTION 51-116,
14 IDAHO CODE, TO PROVIDE FOR A CERTAIN STATEMENT REGARDING COMMUNICATION
15 TECHNOLOGY; AMENDING SECTION 51-120, IDAHO CODE, TO PROVIDE THAT A
16 RECORDER MAY ACCEPT A TANGIBLE COPY OF AN ELECTRONIC RECORD IN CERTAIN
17 INSTANCES; AND PROVIDING AN EFFECTIVE DATE.
18

19 Be It Enacted by the Legislature of the State of Idaho:

20 SECTION 1. That the Heading for Chapter 1, Title 51, Idaho Code, be, and
21 the same is hereby amended to read as follows:

22 CHAPTER 1
23 REVISED UNIFORM LAW ON NOTARIAL ACTS (2018)

24 SECTION 2. That Section 51-101, Idaho Code, be, and the same is hereby
25 amended to read as follows:

26 51-101. SHORT TITLE. This chapter shall be known and may be cited as
27 the "Revised Uniform Law on Notarial Acts (2018)."

28 SECTION 3. That Section 51-104, Idaho Code, be, and the same is hereby
29 amended to read as follows:

30 51-104. AUTHORITY TO PERFORM NOTARIAL ACT. (1) A notarial officer may
31 perform a notarial act authorized by this chapter or by law of this state
32 other than this chapter.

33 (2) A notary public may not perform a notarial act with respect to a
34 record to which the notary public or the notary public's spouse is a party,
35 or in which either of them has a direct beneficial interest. A notarial act
36 performed in violation of this subsection is voidable.

37 (3) A notarial officer may certify that a tangible copy of an electronic
38 record is an accurate copy of the electronic record.

1 SECTION 4. That Chapter 1, Title 51, Idaho Code, be, and the same is
2 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
3 ignated as Section 51-114A, Idaho Code, and to read as follows:

4 51-114A. NOTARIAL ACT PERFORMED BY REMOTELY LOCATED INDIVIDUAL. (1)
5 As used in this section:

6 (a) "Communication technology" means an electronic device or process
7 that:

8 (i) Allows a notary public and a remotely located individual to
9 communicate with each other simultaneously by sight and sound; and

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

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

15 (c) "Identity proofing" means a process or service by which a third per-
16 son provides a notary public with a means to verify the identity of a re-
17 motely located individual by a review of personal information from pub-
18 lic or private data sources.

19 (d) "Outside the United States" means a location outside the geographic
20 boundaries of the United States, Puerto Rico, the United States Virgin
21 Islands, and any territory, insular possession, or other location sub-
22 ject to the jurisdiction of the United States.

23 (e) "Remotely located individual" means an individual who is not in the
24 physical presence of the notary public who performs a notarial act under
25 subsection (3) of this section.

26 (2) A remotely located individual may comply with the provisions of
27 section 51-106, Idaho Code, by appearing before a notary public by means of
28 communication technology.

29 (3) A notary public located in this state may perform a notarial act us-
30 ing communication technology for a remotely located individual if:

31 (a) The notary public:

32 (i) Has personal knowledge under section 51-107(1), Idaho Code,
33 of the identity of the individual;

34 (ii) Has satisfactory evidence of the identity of the remotely lo-
35 cated individual by oath or affirmation from a credible witness
36 appearing before the notary public under section 51-107(2), Idaho
37 Code, or under this section; or

38 (iii) Has obtained satisfactory evidence of the identity of the
39 remotely located individual by using at least two (2) different
40 types of identity proofing.

41 (b) The notary public is able reasonably to confirm the record before
42 the notary public as the same record in which the remotely located indi-
43 vidual made a statement or on which the remotely located individual exe-
44 cuted a signature;

45 (c) The notary public, or a person acting on behalf of the notary pub-
46 lic, creates an audio-visual recording of the performance of the notar-
47 ial act; and

48 (d) For a remotely located individual located outside the United
49 States:

1 (i) The record:

2 1. Is to be filed with or relates to a matter before a court,
3 governmental entity, public official, or other entity sub-
4 ject to the jurisdiction of the United States; or

5 2. Involves property located in the territorial jurisdic-
6 tion of the United States or a transaction substantially
7 connected with the United States; and

8 (ii) The act of making the statement or signing the record is not
9 prohibited by the foreign state in which the remotely located in-
10 dividual is located.

11 (4) If a notarial act is performed under this section, the certificate
12 of notarial act required by section 51-115, Idaho Code, and the short form
13 certificate provided in section 51-116, Idaho Code, must indicate that the
14 notarial act was performed using communication technology.

15 (5) A short form certificate provided in section 51-116, Idaho Code,
16 for a notarial act subject to this section is sufficient if it:

17 (a) Complies with rules adopted under subsection (8) (a) of this sec-
18 tion; or

19 (b) Is in the form provided by section 51-116, Idaho Code, and contains
20 a statement substantially as follows: "This notarial act involved the
21 use of communication technology."

22 (6) A notary public, a guardian, conservator, or agent of a notary pub-
23 lic, or a personal representative of a deceased notary public, shall retain
24 the audio-visual recording created under subsection (3) (c) of this section
25 or cause the recording to be retained by a repository designated by or on be-
26 half of the person required to retain the recording. The recording must be
27 retained for at least ten (10) years after the recording is made or as other-
28 wise required by rule adopted under subsection (8) (d) of this section.

29 (7) Before a notary public performs the notary public's initial notar-
30 ial act under this section, the notary public shall notify the secretary of
31 state that the notary public will be performing notarial acts facilitated by
32 communication technology and identify the technology. If the secretary of
33 state has established standards for approval of communication technology or
34 identity proofing under subsection (8) of this section and section 51-127,
35 Idaho Code, the communication technology and identity proofing must conform
36 to the standards.

37 (8) In addition to adopting rules under section 51-127, Idaho Code, the
38 secretary of state shall adopt rules under this section regarding perfor-
39 mance of a notarial act. The rules:

40 (a) Shall prescribe the means of performing a notarial act involving a
41 remotely located individual using communication technology;

42 (b) Shall establish standards for communication technology and iden-
43 tity proofing;

44 (c) May establish requirements or procedures to approve providers of
45 communication technology and the process of identity proofing; and

46 (d) May establish standards and a period for the retention of an audio-
47 visual recording created under subsection (3) (c) of this section.

48 (9) Before adopting, amending, or repealing a rule governing perfor-
49 mance of a notarial act with respect to a remotely located individual, the
50 secretary of state shall consider:

- 1 (a) The most recent standards regarding the performance of a notarial
- 2 act with respect to a remotely located individual promulgated by na-
- 3 tional standard-setting organizations and the national association of
- 4 secretaries of state;
- 5 (b) Standards, practices, and customs of other jurisdictions that have
- 6 laws substantially similar to this section; and
- 7 (c) The views of governmental officials and entities and other inter-
- 8 ested persons.

9 SECTION 5. That Section 51-116, Idaho Code, be, and the same is hereby
 10 amended to read as follows:

11 51-116. SHORT FORM CERTIFICATES. The following short form certifi-
 12 cates of notarial acts are sufficient for the purposes indicated if com-
 13 pleted with the information required by section 51-115(1) and (2), Idaho
 14 Code:

15 (1) For an acknowledgment in an individual capacity:

16 State of _____

17 County of _____

18 This record was acknowledged before me on _____ by _____
 19 Date Name(s) of individual(s)

20 _____
 21 Signature of notary public

22 (Stamp)

23 My commission expires: _____

24 (2) For an acknowledgment in a representative capacity:

25 State of _____

26 County of _____

27 This record was acknowledged before me on _____ by _____
 28 Date Name(s) of individual(s)

29 as (type of authority, such as officer or trustee) of (name of party on behalf
 30 of whom record was executed)

31 _____
 32 Signature of notary public

33 (Stamp)

34 My commission expires: _____

1 (3) For a verification on oath or affirmation:

2 State of _____

3 County of _____

4 Signed and sworn to (or affirmed) before me

5 on _____ by _____
6 Date Name(s) of individual(s) making statement

7 _____
8 Signature of notary public

9 (Stamp)

10 My commission expires: _____

11 (4) For witnessing or attesting a signature:

12 State of _____

13 County of _____

14 Signed (or attested) before me on _____ by _____
15 Date Name(s) of individual(s)

16 _____
17 Signature of notary public

18 (Stamp)

19 My commission expires: _____

20 (5) For certifying a copy of a record:

21 State of _____

22 County of _____

23 I certify that this is a true and correct copy of a record in the possession

24 of _____

25 Dated _____

26 _____
27 Signature of notary public

28 (Stamp)

1 My commission expires: _____

2 (6) If the notarial act is performed on behalf of a remotely located
3 individual and utilizing communication technology under section 51-114A,
4 Idaho Code, the certificates in this section shall include a statement sub-
5 stantially as follows: "This notarial act involved the use of communication
6 technology."

7 SECTION 6. That Section 51-120, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 51-120. NOTIFICATION REGARDING PERFORMANCE OF NOTARIAL ACT ON ELEC-
10 TRONIC RECORD -- SELECTION OF TECHNOLOGY -- ACCEPTANCE OF TANGIBLE COPY OF
11 ELECTRONIC RECORD. (1) A notary public may select one (1) or more tamper-ev-
12 ident technologies to perform notarial acts with respect to electronic
13 records. A person may not require a notary public to perform a notarial act
14 with respect to an electronic record with a technology that the notary public
15 has not selected.

16 (2) Before a notary public performs the notary public's initial notar-
17 ial act with respect to an electronic record, a notary public shall notify
18 the secretary of state that the notary public will be performing notarial
19 acts with respect to electronic records and identify the technology the no-
20 tary public intends to use. If the secretary of state has established stan-
21 dards for approval of technology pursuant to section 51-127, Idaho Code, the
22 technology must conform to the standards. If the technology conforms to the
23 standards, the secretary of state shall approve the use of the technology.

24 (3) A recorder shall accept for recording a tangible copy of an elec-
25 tronic record containing a notarial certificate as satisfying any require-
26 ment that a record accepted for recording be an original, if the notarial of-
27 ficer executing the notarial certificate certifies that the tangible copy is
28 an accurate copy of the electronic record.

29 SECTION 7. This act shall be in full force and effect on and after Jan-
30 uary 1, 2020.