IN THESENATE

SENATE BILL NO. 1111

BY STATE AFFAIRS COMMITTEE

AN ACT

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

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

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

CHAPTER 1

REVISED UNIFORM LAW ON NOTARIAL ACTS (2018)

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

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

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

51-104. AUTHORITY TO PERFORM NOTARIAL ACT. (1) A notarial officer may
perform a notarial act authorized by this chapter or by law of this state
other than this chapter.
(2) A notary public may not perform a notarial act with respect to a
record to which the notary public or the notary public's spouse is a party,
or in which either of them has a direct beneficial interest. A notarial act
performed in violation of this subsection is voidable.
(3) A notarial officer may certify that a tangible copy of an electronic
record is an accurate copy of the electronic record.
SECTION 4. That Chapter 1, Title 51, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 51-114A, Idaho Code, and to read as follows:

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

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

(i) Allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and
(ii) 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) of this section.

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

(3) A notary public located in this state may perform a notarial act using communication technology for a remotely located individual if:

(a) The notary public:

(i) Has personal knowledge under section 51-107(1), Idaho Code, of the identity of the individual;
(ii) Has 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 51-107(2), Idaho Code, or under this section; or
(iii) Has obtained satisfactory evidence of the identity of the remotely located individual by using at least two (2) different types of identity proofing.

(b) The notary public is able reasonably to confirm the record before the notary public as the same record in which the remotely located individual made a statement or on which the remotely located 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; and

(d) For a remotely located individual located outside the United States:
(i) The record:
1. Is to be filed with or relates to a matter before a court, governmental entity, public official, or other entity subject to the jurisdiction of the United States; or
2. Involves property located in the territorial jurisdiction of the United States or a transaction substantially connected with the United States; and

(ii) 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 51-115, Idaho Code, and the short form certificate provided in section 51-116, Idaho Code, must indicate that the notarial act was performed using communication technology.

(5) A short form certificate provided in section 51-116, Idaho Code, for a notarial act subject to this section is sufficient if it:
(a) Complies with rules adopted under subsection (8)(a) of this section; or
(b) Is in the form provided by section 51-116, Idaho Code, 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)(c) of this section or cause the recording to be retained by a repository designated by or on behalf of the person required to retain the recording. The recording must be retained for at least ten (10) years after the recording is made or as otherwise required by rule adopted under subsection (8)(d) of this section.

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

(8) In addition to adopting rules under section 51-127, Idaho Code, the secretary of state shall adopt rules under this section regarding performance of a notarial act. The rules:
(a) Shall prescribe the means of performing a notarial act involving a remotely located individual using communication technology;
(b) Shall establish standards for communication technology and identity proofing;
(c) May establish requirements or procedures to approve providers of communication technology and the process of identity proofing; and
(d) May establish standards and a period for the retention of an audio-visual recording created under subsection (3)(c) of this section.

(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 shall consider:
(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 national association of secretaries of state; (b) Standards, practices, and customs of other jurisdictions that have laws substantially similar to this section; and (c) The views of governmental officials and entities and other interested persons.

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

51-116. SHORT FORM CERTIFICATES. The following short form certificates of notarial acts are sufficient for the purposes indicated if completed with the information required by section 51-115(1) and (2), Idaho Code:

(1) For an acknowledgment in an individual capacity:
State of ______________________
County of ______________________
This record was acknowledged before me on _____ by ______________________
Date ______ Name(s) of individual(s)

________________________________
Signature of notary public
(Stamp)
My commission expires: _________

(2) For an acknowledgment in a representative capacity:
State of ______________________
County of ______________________
This record was acknowledged before me on _____ by ______________________
Date ______ Name(s) of individual(s)
as (type of authority, such as officer or trustee) of (name of party on behalf of whom record was executed)

________________________________
Signature of notary public
(Stamp)
My commission expires: _________
(3) For a verification on oath or affirmation:

1 State of ______________________
2 County of ______________________
3 Signed and sworn to (or affirmed) before me
4 on ______ by ____________________
5 Date         Name(s) of individual(s) making statement
6 ________________________________
7 Signature of notary public
8 (Stamp)
9 My commission expires: _________

(4) For witnessing or attesting a signature:

10 State of ______________________
11 County of ______________________
12 Signed (or attested) before me on ______ by ____________________
13 Date        Name(s) of individual(s)
14 ________________________________
15 Signature of notary public
16 (Stamp)
17 My commission expires: _________

(5) For certifying a copy of a record:

18 State of ______________________
19 County of ______________________
20 I certify that this is a true and correct copy of a record in the possession
21 of ______________________________
22 Dated __________________________
23 ________________________________
24 Signature of notary public
25 (Stamp)
My commission expires: ________

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

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

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

(2) Before a notary public performs the notary public's initial notarial act with respect to an electronic record, a notary public shall notify the secretary of state that the notary public will be performing notarial acts with respect to electronic records and identify the technology the notary public intends to use. If the secretary of state has established standards for approval of technology pursuant to section 51-127, Idaho Code, the technology must conform to the standards. If the technology conforms to the standards, the secretary of state shall approve the use of the technology.

(3) A recorder shall accept for recording a tangible copy of an electronic record containing a notarial certificate as satisfying any requirement that a record accepted for recording be an original, if the notarial officer executing the notarial certificate certifies that the tangible copy is an accurate copy of the electronic record.

SECTION 7. This act shall be in full force and effect on and after January 1, 2020.