

HOUSE BILL REPORT

SSB 5081

As Passed House - Amended:

April 10, 2017

Title: An act relating to adoption of the revised uniform law on notarial acts.

Brief Description: Adopting the revised uniform law on notarial acts.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Pedersen and Miloscia; by request of Uniform Law Commission).

Brief History:

Committee Activity:

Judiciary: 3/9/17, 3/16/17 [DPA].

Floor Activity:

Passed House - Amended: 4/10/17, 98-0.

Brief Summary of Substitute Bill (As Amended by House)

- Adopts the Revised Uniform Law on Notarial Acts, repeals current laws governing notaries public, and amends references.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 12 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Muri, Assistant Ranking Minority Member; Frame, Goodman, Graves, Haler, Hansen, Kirby, Klippert, Orwall and Shea.

Staff: Cece Clynch (786-7195).

Background:

Notarial Acts.

Originally enacted in 1985, many of Washington's laws with respect to notarial acts and notaries public were modelled on the Uniform Law Commission's (ULC) 1982 Uniform Law on Notarial Acts. (The ULC is composed of state commissions on uniform laws. The purpose of the ULC is to determine which areas of law should be made uniform, and to

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

promote uniformity by drafting and proposing uniform statutes. States decide whether to enact a uniform law or not.)

A "notarial act" means:

- taking an "acknowledgment," which is a statement by a person that the person has executed an instrument as the person's free and voluntary act for the uses and purposes stated therein and, if the instrument is executed in a representative capacity, a statement that the person signed the document with proper authority and executed it as the act of the person or entity represented and identified within;
- administering an oath or affirmation;
- taking a "verification upon oath or affirmation," which means a statement by a person who asserts it to be true and makes the assertion upon oath or affirmation;
- witnessing or attesting a signature;
- certifying or attesting a copy;
- receiving a protest of a negotiable instrument;
- certifying that an event has occurred or an act has been performed; and
- any other act that a Washington notary public is authorized to perform.

Notarial acts must be performed in accordance with statutory requirements and be evidenced by a certificate that is signed and dated by the notary public and includes the name of the jurisdiction in which the act is performed, the title of the notary public or other notarial officer, and an impression of the seal or stamp. Forms of notarial certificates are found in statute.

Appointment as Notary Public.

The director of the Department of Licensing (DOL) appoints notaries public. To qualify, a person must:

- be at least 18 years old;
- reside in Washington, or reside in an adjoining state and be regularly employed or carry on business in Washington;
- be able to read and write English; and
- submit an application, pay the fee, and submit proof from a surety company that a \$10,000 surety bond will be in effect for the term of the appointment.

The DOL may deny the appointment based on unprofessional conduct, disciplinary action taken against a professional license, official misconduct, or the violation of the Immigration Services Fraud Prevention Act. The Uniform Regulation of Business and Professions Act governs unlicensed practice, the issuance and denial of licenses, and discipline. A notary public may voluntarily resign by mailing or delivering a resignation letter to the director. In that case, the DOL rules provide that the notary public must mail or deliver his or her seal or stamp to the DOL.

The term of appointment is generally four years. Every person appointed as a notary public must procure a seal or stamp that meets statutory requirements and size and form requirements set by the DOL. The authenticity of the seal and official signature of a notary public may be evidenced by a certificate of authority from the DOL director or the Secretary of State or an apostille in the form prescribed by the Apostille Convention. (A large number of countries, including the United States (U.S.), have joined a treaty, commonly known as the

Apostille Convention, for simplifying the authentication of public documents. Where it applies, the authentication process is met by the issuance of an authentication certificate by an authority designated by the country that issued the public document in the first instance. This certificate is called an apostille.)

A notary public need not charge fees. Maximum fees that may be charged by notaries are established in rule. In addition, a notary may charge actual costs of copying, and may charge a travel fee when traveling to perform a notarial act.

Notarial Acts by Persons Other Than Washington Notaries Public.

Notarial acts by officials in other U.S. states or territories, federal authorities, and foreign authorities have the same effect under the law of Washington as if performed by a Washington notary public if:

- performed in another state or territory by a notary public of that jurisdiction, a judge, clerk, or deputy clerk of that jurisdiction, or any other person authorized by the law of that jurisdiction;
- performed by any of the following persons under authority granted by U.S. law: judge, clerk, deputy clerk of a court; commissioned officer in active service with U.S. military forces; an officer of the U.S. foreign service or consular agent; or any other person authorized by federal law; or
- performed within the jurisdiction of, and under authority of, a foreign nation by any of the following: a notary public or notary; a judge, clerk, or deputy clerk of a court of record; or any other person authorized by the law of that jurisdiction to perform notarial act. An apostille in the form prescribed by the Apostille Convention conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the designated office.

Summary of Amended Bill:

Notarial Acts.

The Revised Uniform Law on Notarial Acts (RULONA), modelled on the Uniform Law Commission's 2010 act of the same name, is enacted. To date, the RULONA has been enacted in six states. In 2017 the RULONA was introduced in another seven states, including Washington.

The term "notarial act" is defined similarly to current law, but specifically encompasses acts performed with respect to tangible and electronic records. A notarial act must be evidenced by a certificate containing the notarial officer's title, jurisdiction, and be signed and dated contemporaneously with the notarial act. The RULONA includes various acceptable certificate formats and provides for the form, content, and use of a stamping device, which can be a physical device or an electronic device or process.

Commission as Notary Public.

Under the RULONA, a notary public must:

- be at least 18 years old;
- be a citizen or permanent legal resident of the United States (U.S.);
- be a resident of or have a place of employment or practice in Washington;
- be able to read and write English;

- execute an oath of office;
- not be disqualified by reason of unprofessional conduct or an act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a notary public; and
- submit an application to the Department of Licensing (DOL), pay the fee, and submit proof from a surety company that a surety bond in the amount established in rule will be in effect for the term of the appointment.

The director of the DOL may require, by rule, that an applicant successfully pass a course or an examination.

Specific provision is made for an "electronic records notary public," which is defined as an individual commissioned by the director to perform notarial acts with respect to electronic records. Absent a commission as an electronic records notary public, a notary public may not perform notarial acts with respect to electronic records. An electronic records notary public may select one or more tamper-evident technologies to perform notarial acts that meets standards established by the director of the DOL, and before performing the initial notarial act with respect to an electronic record, the notary public must notify the DOL and identify the technology that he or she will use.

It is explicitly recognized that a commission as a notary public does not authorize a person to:

- assist persons in drafting legal records, give legal advice, or otherwise practice law;
- act as an immigration consultant or an expert on immigration matters;
- represent a person in a judicial or administrative proceeding relating to immigration;
- or
- receive compensation for performing any of the above listed activities.

A notary public (other than a Washington attorney, or a Washington limited license legal technician acting within the scope of his or her license) may not use the term "notario" or "notario publico." According to the American Bar Association, the term "notario publico" can deceive persons within immigrant communities because the literal translation of "notario publico" is "notary public," and while a notary public in the U.S. is authorized only to witness the signature of forms, a notary public in many other countries refers to an individual who possesses a license to practice law and who is authorized to represent others before the government.

A notary public is required to maintain a journal in which is chronicled all notarial acts, to keep the journal for 10 years after the performance of the last act chronicled in the journal, and destroy it at the end of the 10-year period in accordance with rule. Journal entries must be made contemporaneously and include the date and time of the act, a description of the record and type of notarial act, the full name and address of each individual, and any additional information recommended by the director of the DOL. It must be kept in a locked and secured place. Upon resignation from, or the revocation or suspension of, a commission, a notary public must continue to retain the journal for the required 10-year period and inform the DOL where the journal is located.

It is expressly provided that nothing in the RULONA authorizes a notary public to provide court reporting services.

Notarial Officers.

A "notarial officer" means a notary public or other individual authorized to perform a notarial act, including judges, clerks, or deputy clerks of a court of this state, and any other individual authorized to perform a notarial act by the law of this state. Provisions are included in the RULONA recognizing notarial acts performed in other states, under the authority of a federally recognized Indian tribe and in the jurisdiction of the tribe, under authority of federal law, or under the authority and in the jurisdiction of a foreign state.

The RULONA provides specific direction to notarial officers with respect to a variety of situations, some of which are described below:

- If a notarial act relates to a statement made in or a signature executed on a record, the individual must appear personally before the notarial officer.
- A notarial officer must determine from personal knowledge or satisfactory evidence that an individual has the identity claimed.
- A notarial officer who certifies or attests a copy of a record that was copied must compare the copy with the original record and determine that the copy is a full, true, and accurate transcription or reproduction.
- A notarial officer may make or note a protest of a negotiable instrument only if the notarial officer is licensed to practice law in the state, is acting under the authority of an attorney who is licensed in this or another state, or is acting under the authority of a financial institution regulated by this state, another state, or the federal government. Under the Uniform Commercial Code pertaining to negotiable instruments, a protest is a certificate of dishonor made by a U.S. consul or vice-consul, or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment.

Notarial officers are prohibited from performing a notarial act with respect to a record to which the officer or the officer's spouse or domestic partner is a party, or in which the officer, spouse, or partner have a direct beneficial interest. A notarial officer may not notarize his or her own signature. A notarial act made in violation of these provisions is voidable.

The entirety of the Notaries Public chapter is repealed. References in the Revised Code of Washington to the Notaries Public chapter, and sections in that chapter, are amended to refer to the new RULONA chapter. A severability clause is included.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect on July 1, 2018.

Staff Summary of Public Testimony:

(In support) The National Conference of Commissioners on Uniform State Laws (NCUSL) was formed in 1892 to promote principles of federalism. The concern at the time was that Congress was passing laws that interfered with traditionally state matters. The NCUSL sought to encourage commerce by promoting uniformity and, at the same time, keep Congress from dictating the law to the states. Washington has been a member since 1905. The Revised Uniform Law on Notarial Acts (RULONA) has been the subject of conversations between the Department of Licensing (DOL) and sections of the Washington state bar for two years. There are a couple of issues in Substitute Senate Bill (SSB) 5081 that do need fixing, as will be heard in testimony. The reason that the bill only encourages, but does not require, training and the keeping of a journal is because one of the senators felt strongly that these should not be required. The DOL supports the bill. It brings the laws regarding notaries public into the modern age. From the perspective of a person who trains 500 to 700 persons every year to be notaries public, these changes are welcome. Two issues still need to be addressed, however: (1) recordkeeping in the form of a journal should be mandatory and not just strongly suggested; and (2) training should be required, even if it is minimal. Keeping a journal can be critical in situations when someone else has used a notary's seal or stamp. The absence of an entry in the journal can show that it was not the notary that performed the act. A notary public journal includes entries for all of the recordkeeping details that can demonstrate that the entire job was done. As for training, all that is required currently is that a notary read the laws, and even that is not always done. Recently, only two people in an entire class raised their hands when asked whether they had read the laws.

(Opposed) None.

(Other) There is support for the bill, but there is a need for an amendment with respect to the issue of whether personal appearance is required if a notarial act relates to a statement made in or a signature executed on a record. It should be required, as was required in the 2010 RULONA. Currently, Substitute Senate Bill 5081 only requires that it be "in the presence of" when personal appearance should be required. Personal appearance allows the notarial officer to determine whether the person is competent, is under duress, or is under the influence of alcohol or drugs. The Court Reporter Association was instrumental in bringing forward the Court Reporter Act. Court reporters are required under law to have considerable training, continuing education, and adhere to prescribed rules and ethical guidelines. The association has concerns that, via the RULONA provision concerning electronic notaries public, out of state firms may circumvent the laws regarding court reporters and use a notary public to digitally record proceedings instead. Court reporters have no concerns with notaries public administering oaths, but don't want them crossing over into the field of court reporting. Court reporters are happy with the solution proposed to insert language in sections 2 and 25 to make sure that this law does not allow a notary public to provide court reporter services.

Persons Testifying: (In support) Senator Pedersen, prime sponsor; Stephanie Sams, Department of Licensing; and Rebecca Jacobs, Attorney and Notary Supply of Washington.

(Other) Dwight Bickel, Washington Land Title Association; Phyllis Lykken, Washington Court Reporters Association; and Elizabeth Harvey, Washington Court Reporters Association.

Persons Signed In To Testify But Not Testifying: None.