

SENATE BILL REPORT

SB 5081

As Reported by Senate Committee On:
Law & Justice, February 8, 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: Senators Pedersen and Miloscia; by request of Uniform Law Commission.

Brief History:

Committee Activity: Law & Justice: 1/31/17, 2/08/17 [DPS].

Brief Summary of Substitute Bill

- Adopts uniform processes for notarial acts.
- Repeals and replaces dated notary public laws.
- Defines and creates a license endorsement for an "electronic records notary public."
- Prohibits notaries from providing legal advice or representing a person in an immigration proceeding, excepting licensed attorneys and limited license legal technicians acting within the scope of their license.
- Encourages but does not require a notary to keep a journal of all notarial acts performed.
- Does not require notary applicants and renewing notaries to pass a course or exam.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5081 be substituted therefor, and the substitute bill do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel, Darneille, Frockt and Wilson.

Staff: Tim Ford (786-7423)

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.

Background: A notary public witnesses a transaction and preserves the integrity and reliability of the transaction with a notarized document. Under current law, notarial acts include taking an acknowledgement, administering an oath, witnessing a signature, or certifying a copy or act. A notary must adhere to standards such as determining and certifying, either from personal knowledge or from satisfactory evidence, that the person appearing before the notary is the person signing a document. The notarial act must be evidenced on a certificate signed and dated by the notary and accompanied by an impression of the official seal or stamp. Notaries are appointed and regulated by the Department of Licensing (DOL), may charge fees set by DOL, and are subject to revocation of appointment for incompetency, or criminal penalties for official misconduct.

In 1982, the Uniform Law Commission (ULC) produced the original Uniform Law on Notarial Acts (ULONA). It replaced the 1892 uniform law, the Uniform Acknowledgement Act. In 1985, Washington adopted the original ULONA. Use of electronic records in commerce and other advancing technologies have led to variations among states in notarial practice and in the state regulation of notary practice. The variability of the states' laws affects interstate commercial and lending transactions. Particularly for negotiated instruments and banking transactions, Washington's Department of Licensing (DOL) receives improper protests which result in sanctions for notaries who are unaware of protest requirements.

In 2010, the ULC updated and modernized the ULONA producing the Revised Uniform Law on Notarial Acts (RULONA). The revision updates the provisions on notary responsibilities, electronic recording, interstate recognition, and remedies. RULONA contains provisions which:

- require that notarizations be performed by notarial officers: commissioned notaries public, judges and their clerks, and others, including attorneys, as authorized by other state law;
- prohibit notarial officers from acting in any transaction in which the officer or their spouse, is a party or has a direct beneficial interest;
- prohibits notarial officers from using the title “notario publico” and outlaws false and deceptive advertising;
- requires notaries who do advertise to state they cannot practice law or act as immigration counselors;
- requires any person seeking a notarization to appear in person before the notarial officer;
- requires the notary to verify the identity of the person and to witness the signature or receive an acknowledgement or verification of the signature;
- permits a notarial officer to refuse to act if satisfactory identification is not provided or if not otherwise satisfied by the interaction—the notary may not refuse to act if the refusal would be prohibited by other law.
- requires a notary to evidence any notarial acts by certificates attached to the notarized record—specifies the contents of the certificate and provides for form and content;
- provides for recognition of valid notarizations from other states, from federally recognized American Indian tribes or nations, or under federal law or the law of foreign nations;

- provides minimum standards for receiving a commission, including optional provisions for surety bonds, examination of applicants, and maintenance of journals of notarial acts;
- allows the commissioning authority to establish rules for the implementation of the act and standards for notarization of electronic records; and
- implementing the provisions of the Uniform Electronic Transactions Act and the federal Electronic Signatures in Global and National Commerce Act, specifies the conditions for notarization of electronic records.

RULONA has been adopted by Oregon, Montana, North Dakota, Iowa, West Virginia, and Pennsylvania. Georgia and New Jersey have introduced bills adopting RULONA.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (First Substitute): The bill is substantially similar to RULONA. A few key provisions of the bill make the following changes to law:

- a notary may obtain a license endorsement as an "electronic records notary public" from DOL;
- a notary may note a protest of a negotiable instrument only if the notary is licensed to practice law in this state, acting under the authority of a licensed attorney, or acting under the authority of a financial institution regulated by the state;
- the Director of DOL may define "in the presence of a notarial officer" by rule to satisfy the requirement for personal appearance before a notary;
- notaries may not notarize their own signature or the signature of a in-laws or step-relatives;
- notaries must compare the original document being notarized to a copy of the original document;
- notary certificates must be in English or in a dual language format with one language being English;
- the Director of DOL does not have authority to invalidate a notarial act; and
- DOL must create and maintain an electronic database of licensed notaries.

Differences in the bill as compared to RULONA are the removal of a requirement to maintain a journal of all notarial acts that is replaced by non-mandatory language where a notary is encouraged to keep and maintain a journal, an exception from prohibited acts for limited license legal technicians acting within the scope of their license, and removal of DOL authority to require applicants and renewals to pass a course or exam.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Removes a requirement for an applicant to pass a course or examination.
- Authorizes that a notary public is encouraged but not required to keep a journal that chronicles all notarial acts performed.
- Allows a limited licensed legal technician (LLLT) who is also a notary, to perform certain acts within the scope of their LLLT license, that are otherwise prohibited acts for a notary.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Proposed Substitute: *The committee recommended a different version of the bill than what was heard.* PRO: The bill largely modernizes the notary act. The proposed substitute bill is generally acceptable, but there are some suggestions for improving the bill. The proposed substitute prohibits a notary from notarizing the signature of an in-law or step relative which the Uniform Law Commission version of the RULONA does not prohibit. The ULC's version is preferred. The bills broader prohibitions may adversely affect small family-run solo shops and low income families by increasing costs associated with notarizing documents. Many members of the public use a notary they know when a notary is needed. It is often someone with whom the individual already has a business relationship such as a bank employee or law firm staff. A publicly available electronic notary database may disrupt established business relationships between notaries and clients. Where there are exceptions in the bill for attorneys, we suggest the bill to add Washington-licensed limited license legal technicians (LLLTs) to the attorney exceptions where appropriate. We are saddened by removal of the journal requirement from the original bill because a journal is the best defense for notaries against fraud resulting from unauthorized use of unsecured notary stamps in a workplace. Sometimes the only thing that protects the notary is their journal entry. There is a notary register maintained by DOL so the concerns expressed about the public's use of the registry may not a significant problem.

Persons Testifying: PRO: Rochelle Haller, WSBA Elder Law Section; Rebecca Jacob, Attorney and Notary Supply of Washington Inc.; Stephanie Sams, WA Dept. of Licensing.

Persons Signed In To Testify But Not Testifying: No one.