

HOUSE BILL REPORT

SB 5641

As Passed House:
April 12, 2019

Title: An act relating to electronic notarial acts by remotely located individuals.

Brief Description: Adopting the 2018 uniform law commission amendments to the uniform law on notarial acts.

Sponsors: Senators Holy, Pedersen and Padden; by request of Uniform Law Commission.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 3/13/19, 3/22/19 [DP].

Floor Activity:

Passed House: 4/12/19, 94-0.

Brief Summary of Bill

- Amends the Revised Uniform Law on Notarial Acts (RULONA) to provide for electronic notarial acts for remotely-located individuals.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 14 members: Representatives Jinkins, Chair; Thai, Vice Chair; Dufault, Assistant Ranking Minority Member; Goodman, Graham, Hansen, Kilduff, Kirby, Klippert, Orwall, Shea, Valdez, Walen and Ybarra.

Staff: Cece Clynch (786-7195).

Background:

Uniform Law Commission.

The Uniform Law Commission (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 promote uniformity by drafting and proposing uniform statutes. States decide whether to enact a uniform law.

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.

Washington's Revised Uniform Law on Notarial Acts.

This state's Revised Uniform Law on Notarial Acts (RULONA), modelled on the ULC's 2010 act of the same name, was enacted in 2017 and went into effect in July 2018. The RULONA replaced Washington laws with respect to notarial acts and notaries public, many of which were modelled on the ULC's 1982 Uniform Law on Notarial Acts. To date, the RULONA has been enacted in the District of Columbia and 11 states, including Idaho, Oregon, and Montana.

A "notarial act" means an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under the law. This term includes:

- taking an acknowledgment;
- administering an oath or affirmation;
- taking a verification on oath or affirmation;
- witnessing or attesting a signature;
- certifying or attesting a copy;
- certifying the occurrence of an event or the performance of an act; and
- noting a protest of a negotiable instrument.

A notarial act must be evidenced by a certificate containing the notarial officer's title and 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;
- 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.

Specific provision is made for an "electronic records notary public," which is defined as an individual commissioned by the DOL 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.

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 DOL.

Revised Uniform Law on Notarial Acts (2018).

The RULONA (2018) updates the RULONA (2010) by authorizing a notary public to perform notarial acts for remotely-located individuals. According to the ULC, the 2018 amendments to the RULONA were prepared and approved "in response to a rapidly emerging trend among the states to authorize the performance of notarial acts by means of audio-visual technology." If a state has, like Washington, already adopted the RULONA, it may update to the 2018 version by enacting a new section and various new subsections.

Summary of Bill:

Revised Uniform Law on Notarial Acts (2018).

A new section is added to the Revised Uniform Law on Notarial Acts (RULONA) that provides that an electronic records notary public located in Washington may perform a notarial act using communication technology for a remotely-located individual if:

1. the electronic records notary public:
 - a. has personal knowledge of the identity of the remotely-located individual;
 - b. has satisfactory evidence of the identity of the remotely-located individual by a verification on oath or affirmation of a credible witness appearing before and identified by the notary; or
 - c. has obtained satisfactory evidence of the identity of the remotely-located individual by using at least two different types of identity proofing;
2. the electronic records notary public is reasonably able to confirm that a record is the same record in which the remotely-located individual made a statement or on which the individual executed a signature;
3. the electronic records notary public, or a person acting on his or her behalf, creates an audio-visual recording of the performance of the notarial act; and
4. for a remotely-located individual located outside the United States (U.S.):
 - a. the record:
 - i. 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 U.S.; or
 - ii. involves property located in the territorial jurisdiction of the U.S. or involves a transaction substantially connected with the U.S.; and
 - b. 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.

The provision of the RULONA that requires that a notarial act be evidenced by a certificate is amended to require that if the notarial act is performed under the new section, the certificate must indicate that the notarial act was performed using communication technology. A notarial officer is explicitly authorized to certify that a tangible copy of an electronic record is an accurate copy of the electronic record. The short form certificate of notarial acts is amended to reference the new section.

The director of the Department of Licensing (DOL) is tasked with adopting rules under the new section which may: prescribe the means of performing a notarial act involving

remotely-located individuals using communication technology; establish standards for communication technology and identity proofing; establish requirements or procedures to approve providers of communication technology and the process of identity proofing; and establish retention standards. Prior to adopting new rules, the DOL must consider: the most recent standards regarding the performance of a notarial act with respect to a remotely-located individual adopted by national standard-setting organizations and the recommendations of the National Association of Secretaries of State; standards, practices, and customs of other jurisdictions that have substantially similar laws; and the views of governmental officials, entities, and other interested persons.

Before an electronic records notary public performs his or her initial notarial act under this new section, the DOL must be notified and advised of the technologies that will be used. If the DOL has established standards for approval of communication technology or identity proofing, the communication technology and identity proofing must conform to the standards.

The name of the chapter in which the RULONA is currently codified and to which the new provisions are added is renamed the 2018 RULONA.

Definitions.

A number of terms are defined, including the following:

- "Communication technology" means an electronic device or process that: allows an electronic records notary public and a remotely-located individual to communicate with each other simultaneously by sight and sound; and, when necessary under and consistent with other applicable law, facilitates communication with a remotely-located individual with a vision, hearing, or speech impairment.
- "Foreign state" means a jurisdiction other than the U.S., a state, or a federally recognized Indian tribe.
- "Identity proofing" means a process or service by which a third person provides an electronic records 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.
- "Remotely located individual" means an individual who is not in the physical presence of the electronic records notary public who performs a notarial act using communication technology.

Miscellaneous.

A new subsection is added to the provision in the criminal code regarding false certification. A notarial officer is guilty of false certification if he or she knowingly certifies falsely that a tangible copy of an electronic record is an accurate copy of the electronic record.

Two provisions in the chapter governing recording with respect to real property are amended to provide that:

- even if not evidenced by a certificate that indicates that the notarial act was performed using communication technology, a tangible copy of an electronic record purporting to convey or encumber real estate which has been recorded in the auditor's office imparts the same notice to third persons from the date of recording as if the tangible copy had been so certified; and

- a county auditor or, in charter counties, the county official charged with the responsibility for recording instruments in county records, may accept for recording a tangible copy of an electronic record containing a notarial certificate as satisfying any requirement that a record be an original, if the notarial officer executing the notarial certificate certifies that the tangible copy is an accurate copy of the electronic record.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on October 1, 2020.

Staff Summary of Public Testimony:

(In support) The Land Title Association supports this bill. While it was once the case that people lived their entire adult lives in one county and if they bought a cabin it was not too far away, now people frequently pack up and move across the country. There are also situations in which a person in one state is dealing with a relative's ancillary probate proceeding in another state. This bill allows for smooth interstate transactions. In Washington, there is a title office in almost every county. With the push toward making everything electronic, remote and rural offices need to have the ability to transact business or they will not be able to compete on a national level. Federal agencies, in particular, are requiring that everything be done electronically. Currently, 20 states are considering similar legislation. This legislation will prove to be an important benefit for the military population. While military personnel are deployed, they will still be able to complete transactions. This bill will provide a leap out of the 1990s and into the 2000s. It is both practical and necessary, and it is consistent with technology.

(Opposed) None.

Persons Testifying: Senator Holy, prime sponsor; Stuart Halsan and Bill Ronhaar, Washington Land Title Association; and Sean Holland, First American Title Insurance Company.

Persons Signed In To Testify But Not Testifying: None.