

SENATE BILL REPORT

SB 5641

As of February 6, 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: Law & Justice: 2/05/19.

Brief Summary of Bill

- Authorizes an electronic records notary public to perform a notary act with a remotely located individual.
- Requires an audio-visual recording to be retained of a notary act with a remote individual.
- Authorizes the Department of Licensing to adopt rules governing standards for communication technologies and identity proofing.
- Authorizes a notary to certify that a tangible copy of an electronic record is accurate for certain recordings with the county auditor.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Tim Ford (786-7423)

Background: The Washington Legislature enacted the Revised Uniform Law on Notarial Acts (RULONA) in 2017. RULONA governs actions by a notary public which includes taking an acknowledgment, administering an 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 in certain instances. A notarial act may be performed with respect to a tangible or electronic record. An "electronic records notary public" means an individual commissioned by the director of the Department of Licensing (DOL) to perform a notarial act with respect to electronic records.

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.

Current law requires an individual who wishes to have a document notarized to appear personally before a notary public. A notarial officer must determine from personal knowledge or satisfactory evidence in order to verify the identity of the individual, and that signature on the record is the signature of the individual.

Summary of Bill: The bill enacts the 2018 amendments to RULONA, drafted by the Uniform Law Commission. An electronic records notary public is authorized to perform a notarial act on behalf of a remotely located individual who is not in the notary's physical presence.

To perform a remote notarization, a notary must use a communications technology, such as an electronic device, allowing the notary to simultaneously communicate with the remote individual in both sight and sound. The notary may perform a notarial act for a remote individual if the notary:

- has personal knowledge or satisfactory evidence of the identity of the remote individual;
- is able to confirm that the record before the notary is the same as the record before the remote individual;
- creates an audio-visual recording of the notary act; and
- the record relates to a matter before an entity subject to the jurisdiction of the United States for a remote individual located outside of the United States.

The notary's certificate—or short form certificate—must indicate that the notarial act was performed using communication technology. Unless DOL adopts a rule governing a different period of retention, the audio-visual recording must be retained for at least ten years.

The director of DOL may adopt rules:

- prescribing the means for performing a notarial act with a remote individual;
- establishing standards for communication technologies and identity proofing;
- establishing requirements to approve providers of communication technologies and identity proofing; and
- establish standards and a period of retention for audio-visual recordings.

The notary must notify DOL about the communication technologies intended to be used prior to a notary act with a remote individual. The communication technology and identity proofing must conform to any standards adopted by DOL rule.

A notary may certify that a tangible copy of an electronic record is an accurate copy. A notarial officer is guilty of false certification if the notarial officer certifies falsely that a tangible copy of an electronic record is an accurate copy. False certification is a gross misdemeanor.

A tangible copy of an electronic record purporting to convey or encumber any interest in real estate, which is recorded with a county auditor, is notice to third parties of the conveyance or encumbrance even if the record is not certified by a notary. A county auditor may accept a tangible copy of an electronic record to satisfy any requirement that the record be an original if the notarial officer certifies the tangible copy as an accurate copy of the electronic record.

Appropriation: None.

Fiscal Note: Available.

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

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

Staff Summary of Public Testimony: PRO: This bill enables Washington residents to get documents notarized anywhere, anytime, while requiring enhanced identity verification processes to make notarial acts more secure. It benefits those in the military, those traveling overseas, and rural Washingtonians. It expands the availability of notary services. We are moving to a paperless society. We are adopting the best practices with this bill.

A lot has changed in 30 years when people would go to the bank for notary services. To do business we need modern systems in place. The 2018 amendments to the Revised Uniform Law on Notarial Acts recommended by the Uniform Law Commission would change existing law requiring that you must appear in person before a notary. Ten states have passed some form of remote notarization. Fourteen other states are currently considering similar legislation. Key security benefits require multifactor identification of the person signing. An audio visual record must be made and retained of the notary act. This is important to the future of the real estate industry. The mortgage industry is moving towards e-closing. Small businesses support this legislation because it allows us to compete by providing these critical services anywhere.

Persons Testifying: PRO: Senator Jeff Holy, Prime Sponsor; Stuart Halsan, Washington Land Title Association; Sean Holland, Washington Land Title Association; Bill Ronhaar, Washington Land Title.

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