

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBs0082/P2dn

ARG:amn

October 9, 2019

Please review the attached draft carefully to ensure that it is consistent with your intent.

In this draft, s. 140.01 (10) creates a definition of “official stamp” that applies throughout ch. 140 and is sufficiently broad to include a traditional seal or stamp and an electronic seal or stamp. Various provisions of current law that are renumbered into s. 140.02 continue to refer to the impression of a seal or imprint of a rubber stamp. See, for example, s. 140.02 (1) (e), (2) (a), and (3) (a), as renumbered. Is this okay, or do you instead want to refer only to a physical or electronic image of an official stamp throughout ch. 140? Along the same lines, I don’t believe the cross-reference to s. 140.17 in s. 140.02 (3) (a), as renumbered, works very well because the “official stamp” under s. 140.17 also includes a traditional seal or rubber stamp. (The same comment also applies to s. 140.02 (4) (b), as renumbered.)

The instructed modifications to the uniform act in ss. 140.20 (2) and 140.24 (2) of the draft result in s. 140.20 (2) essentially duplicating s. 140.145 (7). Do you want to eliminate these modifications or remove one of these overlapping provisions?

The attached draft removes what was s. 140.02 (9) (b) in LRBs0082/P1, which created a fee exception for online notarial acts, subject to DFI establishing a fee limit by rule. The instructions remove this exception but allow DFI to establish by rule a maximum fee. The effect of these changes is that the fees under s. 140.02 (9), as renumbered, will apply to notarial acts for remotely located individuals unless DFI promulgates rules establishing different fees. Is this consistent with your intent?

Regarding s. 140.02 (5r), under the instructions provided, the term “communication technology” is only defined for purposes of s. 140.145. I have assumed that the term as used in s. 140.02 (5r) is intended to have the same meaning. Please advise if this assumption is incorrect.

I made some changes to the instructions language for s. 140.145 (10). In particular, when the phrase “as defined in” is used, the terms must match exactly and the cross-referenced term must actually be a definition. Please advise if the changes I made result in any provision that is not consistent with your intent.

Sections 140.145 (8) and 140.27 (1) (a) require DFI to promulgate rules and list examples of authorized rules but do not detail any rule specifically required. Please advise if there is a particular subject that must be included in the mandatory rules.

I moved the rule identified in the instructions as s. 140.27 (1) (a) 13. to s. 140.145 (8) (e) because, with the instructed modification, it fits better under s. 140.145 (8).

The provisions in s. 140.145 (11) are similar to provisions in 2005 Wisconsin Act 421 (2005 Senate Bill 616), relating to the electronic recording council and county registers of deeds. However, the provision created as s. 140.145 (11) (b) 4. in this draft would not seem necessary with respect to notaries public.

I had difficulty reconciling the instructions provisions relating to the responsibilities of the remote notary council and DFI regarding rule-making. The remote notary council must adopt standards relating to notarial acts for remotely located individuals, and must consider a variety of information related to standards, practices, and technologies in doing so. DFI must promulgate these standards as rules, and has no discretion to deviate from the work of the council. See s. 140.145 (11). Yet, under s. 140.145 (9) of the draft, before promulgating rules on the same topic, DFI must consider various factors that, under sub. (11), can play no part in the actual rules, because only the council and not DFI can dictate the standards prescribed by those rules. In addition, the authority granted to DFI under s. 140.145 (8) (and perhaps sub. (7)) is, in part, either inconsistent with the role of the council or illusory if the council is solely responsible for determining standards for notarial acts involving remotely located individuals.

This draft contains rule-making exceptions for emergency rules to expedite the emergency rule-making process. The draft does not contain any exception to the permanent rules process. The rule promulgation process is described in the Legislative Council's *Administrative Rulemaking* publication, available at [http://docs.legis.wisconsin.gov/misc/lc/briefing\\_book/ch04\\_admrules\\_revised\\_withch\\_art.pdf](http://docs.legis.wisconsin.gov/misc/lc/briefing_book/ch04_admrules_revised_withch_art.pdf). Please advise if you would like me to draft a provision that allows DFI to skip any of the steps normally required to promulgate permanent rules.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "1" draft.

Aaron R. Gary  
Senior Legislative Attorney  
(608) 504-5850  
aaron.gary@legis.wisconsin.gov