

2019 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB293)

For: **Joan Ballweg (608) 266-8077** Drafter: **agary**
 By: **Bethany** Secondary Drafters:
 Date: **8/9/2019** May Contact:

Same as LRB:

Submit via email: **YES**
 Requester's email: **Rep.Ballweg@legis.wisconsin.gov**
 Carbon copy (CC) to: **aaron.gary@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Notaries public; online notarization; revised uniform law on notarial acts

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 8/20/2019				
/P1	agary 10/4/2019	anienaja 10/9/2019	mbarman 8/28/2019		
/P2	agary 10/15/2019	anienaja 10/15/2019	mbarman 10/9/2019		
/P3	mkunkel 10/16/2019	anienaja 10/16/2019	jmurphy 10/15/2019		
/1			dwalker	dwalker	

Vers. Drafted

Reviewed

Submitted
10/16/2019

Jacketed
10/16/2019

Required

FE Sent For:

<END>

Gary, Aaron

From: Anderson, Bethany
Sent: Friday, August 09, 2019 1:20 PM
To: Gary, Aaron
Subject: RE: AB 293

Yes, she does want to draft the sub per Bob's recommendations.

Thanks!
Bethany

From: Gary, Aaron <Aaron.Gary@legis.wisconsin.gov>
Sent: Friday, August 09, 2019 1:19 PM
To: Anderson, Bethany <Bethany.Anderson@legis.wisconsin.gov>
Subject: RE: AB 293

Next week is fine. Mostly I just wanted to confirm that Rep. Ballweg would like met to draft a sub to AB293 per the instructions sent by Bob Welch.

Have a nice weekend.
Aaron

From: Anderson, Bethany <Bethany.Anderson@legis.wisconsin.gov>
Sent: Friday, August 09, 2019 12:29 PM
To: Gary, Aaron <Aaron.Gary@legis.wisconsin.gov>
Subject: RE: AB 293

Hi Aaron,

Sorry I missed you yesterday, I was traveling home from NCSL. Is it ok if I give you a call next week on this? If it's a quick thing, I can call today. I'm just trying to work through preparations for our task force hearing on Monday.

Thanks!
Bethany

From: Gary, Aaron <Aaron.Gary@legis.wisconsin.gov>
Sent: Thursday, August 08, 2019 3:46 PM
To: Anderson, Bethany <Bethany.Anderson@legis.wisconsin.gov>
Subject: FW: AB 293

Hi Bethany,
When you have a minute, can you call me about this?
Thanks. Aaron

Aaron R. Gary
Senior Attorney, Legislative Reference Bureau
608.504.5850 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Bob Welch <bob@thewelchgroup.org>
Sent: Wednesday, August 07, 2019 2:58 PM
To: Gary, Aaron <Aaron.Gary@legis.wisconsin.gov>
Subject: AB 293

Aaron,

Here is the memo I mentioned. Hopefully this is helpful.

Thanks!

Bob

Cell or email are the best ways to reach me: 608 770 9787.

Robert Welch
The Welch Group
16 North Carroll Street, Suite 600
Madison, WI 53703

608 819 0150
bob@thewelchgroup.org



Virus-free. www.avg.com

Gary, Aaron

From: Bob Welch <bob@thewelchgroup.org>
Sent: Wednesday, August 07, 2019 2:58 PM
To: Gary, Aaron
Subject: AB 293
Attachments: August 1 memo from WLTA on proposed drafting changes.pdf

Aaron,

Here is the memo I mentioned. Hopefully this is helpful.

Thanks!

Bob

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To: REAL ESTATE INDUSTRY PARTNERS

From: WLTA Legislative Committee members: Cheri Hipenbecker-
cah@knightbarry.com Lisa Petersen PetersenL@ctt.com and Brad
 Hoeschen – bhoeschen@oldrepublictitle.com

Date: August 1, 2019

Re: Revised Uniform Law on Notarial Acts (RULONA) – proposal to adopt
 in Wisconsin with modifications

BACKGROUND: Wisconsin has “notarial” laws in 2 different chapters of our statutes – **Chapter 137** (which includes Subchapter I – Notaries and Commissioner of Deeds; nonelectronic Notarization and Acknowledgment AND Subchapter II – Electronic Transactions and Records: Electronic Notarization and Acknowledgment) and **Chapter 706** (specifically Section 706.07 – Uniform law on notarial acts last revised in 1999). The proposal is to bring all laws governing notarial acts under one Chapter in the Statutes and to adopt the most recent version of the Revised Uniform Law on Notarial Acts approved by the Uniform Law Commission in 2018 in a new Chapter 140 of the Wisconsin Statutes.¹

REVISIONS TO CHAPTER 137:

Subchapter I of Chapter 137 as Sections 137.01 and 137.02 (governing generally how the Wisconsin Dept of Financial Institutions appoints notaries) should be deleted in their entirety from Chapter 137 and then incorporated into Wisconsin’s RULONA. Although for the record, we think that industry partners including the State Bar may want to consider whether a “Commissioner of Deeds” under Section 137.02 is in use and/or still required.

CHAPTER 137
AUTHENTICATIONS AND ELECTRONIC TRANSACTIONS AND RECORDS

<p style="text-align: center;">SUBCHAPTER I NOTARIES AND COMMISSIONERS OF DEEDS; NONELECTRONIC NOTARIZATION AND ACKNOWLEDGMENT</p> <p>137.01 Notaries 137.02 Commissioners of deeds.</p> <p style="text-align: center;">SUBCHAPTER II ELECTRONIC TRANSACTIONS AND RECORDS; ELECTRONIC NOTARIZATION AND ACKNOWLEDGMENT</p> <p>137.11 Definitions. 137.12 Application. 137.13 Use of electronic records and electronic signatures: variation by agree- ment.</p>	<p>137.14 Construction. 137.15 Legal recognition of electronic records, electronic signatures, and elec- tronic contracts. 137.16 Provision of information in writing: presentation of records. 137.17 Attribution and effect of electronic records and electronic signatures. 137.18 Effect of change of error. 137.19 Notarization and solemn judgments. 137.20 Retention of electronic records: originals. 137.21 Admissibility in evidence. 137.22 Automated transactions. 137.23 Time and place of sending and receipt. 137.24 Transferable records. 137.25 Substitution of written documents. 137.26 Interoperability.</p>
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¹ See: <https://www.uniformlaws.org/committees/community-home?CommunityKey=8acec8a5-123b-4724-b131-e5ca8cc6323e>

Note: the State Bar will be providing some language to revise Section 137.12(2m) to meet their needs regarding electronic execution of testamentary type documents:

137.12 Application. (1) Except as otherwise provided in sub. (2) and except in ss. 137.25 and 137.26, this subchapter applies to electronic records and electronic signatures relating to a transaction.

(2) Except as otherwise provided in sub. (3), this subchapter does not apply to a transaction to the extent it is governed by:

(a) Any law governing the execution of wills or the creation of testamentary trusts;

(b) Chapters 401 and 403 to 410, other than s. 401.306.

(2m) This subchapter does not apply to any of the following records or any transaction evidenced by any of the following records:

(a) Records governed by any law relating to adoption, divorce, or other matters of family law.

(b) Notices provided by a court.

(c) Court orders.

(d) Official court documents, including briefs, pleadings, and other writings, required to be executed in connection with court proceedings.

For consideration, we have no objection with Section 137.19 remaining intact and untouched, but the State Bar may have an opinion about the same:

137.19 Notarization and acknowledgement. If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to administer the oath or to make the notarization, acknowledgment, or verification, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

History: 2003 a. 294.

REVISIONS TO CHAPTER 706:

Section 706.07, which is Wisconsin's current "Uniform law on Notarial Acts" should be deleted in its entirety and then incorporated into Wisconsin's RULONA.

Note: there are some internal references in Chapter 706, referring to Section 706.07, which will have to be revised to reflect the new location of Wisconsin's RULONA, including the following:

706.05 Formal requisites for record. (1) Subject to s. 59.43 (2m), every conveyance, and every other instrument which affects title to land in this state, shall be entitled to record in the office of the register of deeds of each county in which land affected thereby may lie.

(2) Except as different or additional requirements may be provided by law, every instrument offered for record shall:

(a) Bear such signatures as are required by law;

(b) Contain a form of authentication authorized by s. 706.06 or 706.07;

(8) A duly recorded certificate signed by or on behalf of the holder of record of any mortgage or other security interest in lands, and authenticated as provided by s. 706.06 or 706.07 identifying the mortgage or other interest and stating that the same has been paid or satisfied in whole or in part, shall be sufficient to satisfy such mortgage or other interest of record.

(12) Every conveyance of any interest in real property offered for recordation shall be accompanied by the form under s. 77.22 (2).

706.06 Authentication. (1) Any instrument may be acknowledged, or its execution otherwise authenticated by its signators, as provided by the laws of this state; or as provided in this section or s. 706.07.

706.08 Nonrecording, effect. (1) (a) Except for patents issued by the United States or this state, or by the proper officers of either, every conveyance that is not recorded as provided by law shall be void as against any subsequent purchaser, in good faith and for a valuable consideration, of the same real estate or any portion of the same real estate whose conveyance is recorded first.

(b) A conveyance of mineral interests which is not recorded in the office of the register of deeds of the county in which the land is located, within 30 days after it is signed by the lessor, is void.

(2) EXECUTION REQUIREMENTS. (a) A correction instrument shall be acknowledged or authenticated in accordance with s. 706.06 or 706.07. It shall recite the document number of the conveyance, the names of the grantor and grantee, and, if given on the conveyance, the volume and page where the conveyance is filed or recorded.

“WISCONSINIZING” RULONA:

First generally the current version of 2019 Assembly Bill 293 includes many technical changes to 137.01 which should be incorporated into the new version.

Here are our comments regarding portions of 2019 Assembly Bill 293 which should be married with RULONA to make a Wisconsinized RULONA:

- This Definition should be added to address the technical changes:

23 **SECTION 3.** 137.01 (1c) of the statutes is created to read:

24 137.01 (1c) **DEFINITIONS.** In this section:

25 (a) “Department” means the department of financial institutions.

- Section 14A of RULONA identifies notarial acts performed for remotely located individuals, and since the new Section 137.195 in our current draft has been reviewed and we believe approved by all stakeholders, we would suggest that in lieu of using Section 14A of RULONA, Wisconsin’s RULONA incorporate the entire Section 137.195 of our current draft.
- If the foregoing proposal is acceptable, then we won’t need the definition of “online notarial act” in the moved Section 137.01, but we will need a definition for “tamper-evident” included:

2 ~~(c) “Online notarial act” or “online notarization” has the meaning given in s.~~

3 ~~137.195 (1) (f).~~

4 (d) “Tamper-evident” means that any change to a record generates evidence

5 of the change.

keep tamper-evident

- Section 21 of RULONA identifies how a notary becomes commissioned. Because we are proposing to incorporate Section 137.01 into Wisconsin's RULONA, we don't believe that Section 21 of RULONA is necessary. However, because RULONA does not require a second commission for online notaries public, the following provision of our current draft should be married into Wisconsin's RULONA:

5 **SECTION 5.** 137.01 (2m) of the statutes is created to read:

6 **137.01 (2m) ONLINE NOTARIES PUBLIC; APPLICATION AND COMMISSION.** (a) A notary
7 public holding a commission under sub. (1g) or (2) may also apply to the department
8 for a commission as an online notary public. The application shall include, at a
9 minimum, all of the following:

10 1. The applicant's name to be used in acting as an online notary public.

11 2. A certification that the applicant will comply with standards established by
12 the department under sub. (13) (a) 1.

13 3. A certification that the applicant will use tamper-evident technologies to
14 perform online notarizations and will have the capability to retain the evidence of
15 these online notarizations for a period established by the department under sub. (13)
16 (a) 2.

17 4. Proof that the applicant has completed a course of instruction approved by
18 the department as provided in sub. (13) (a) 3.

19 5. Disclosure of all instances in which the applicant's commission, license, or
20 other authorization as a notary public has been revoked or terminated, or the
21 applicant has been otherwise subject to any disciplinary action, in any state within
22 the 10-year period preceding the date of application.

23 (b) Qualified applicants under this subsection shall be notified by the
24 department to take and file the official oath as an online notary public. This oath is
25 in addition to the oath required under sub. (1g) (d).

1 (c) For applicants who have fulfilled the requirements of this subsection, the
2 department shall appoint the applicant as an online notary public and issue to the
3 applicant a certificate of appointment for a term of 4 years. The certificate shall state
4 the expiration date of the commission under this subsection.

- Since RULONA does not include a SEAL provision, we believe the following should be incorporated into Wisconsin's RULONA:

5 **SECTION 6.** 137.01 (3) (a) of the statutes is amended to read:

6 137.01 (3) (a) Except as authorized in s. 137.19, and except as provided in par.
7 (c), every notary public shall provide an engraved official seal which makes a distinct
8 and legible impression or official rubber stamp which makes a distinct and legible
9 imprint on paper. The impression of the seal or the imprint of the rubber stamp shall
10 state only the following: "Notary Public," "State of Wisconsin" and the name of the
11 notary. But any notarial seal in use on August 1, 1959, shall be considered in
12 compliance.

13 **SECTION 7.** 137.01 (3) (c) of the statutes is created to read:

14 137.01 (3) (c) For electronic notarizations and online notarial acts, the notary
15 public and online notary public shall use an electronic notarial seal that clearly and
16 legibly states the following: "Notary Public," "State of Wisconsin," and the name of
17 the notary. The electronic notarial seal shall afford the notary public or online notary
18 public the opportunity to indicate the day, month, and year when his or her
19 commission will expire or that the commission is permanent.

- Since RULONA does not address fees and we're proposing to move 137.01 into Wisconsin's RULONA, these items should be included in Wisconsin's RULONA:

3 **SECTION 13.** 137.01 (9) of the statutes is renumbered 137.01 (9) (am), and
4 137.01 (9) (am) (intro.), as renumbered, is amended to read:

5 137.01 (9) (am) (intro.) ~~-A. Except as provided in par. (bm).~~ a notary public shall
6 be allowed the following fees:

7 **SECTION 14.** 137.01 (9) (bm) of the statutes is created to read:

8 137.01 (9) (bm) Subject to any rule promulgated under sub. (13) (b) 1., an online
9 notary public may charge any fee for the performance of an online notarization.

- Since RULONA does not provide for regulation of online system providers, wherever in 2019 Assembly Bill 293 where we've both defined online system providers and provided for some oversight, these provisions should be incorporated into Wisconsin's RULONA. These provisions include the following (we believe this list to be comprehensive):

10 SECTION 15. 137.01 (10) of the statutes is created to read:
11 137.01 (10) ONLINE NOTARIZATION SYSTEM PROVIDERS. (a) In this subsection:
12 1. "Electronic notarial act" or "electronic notarization" means an act that an
13 online notary public is authorized to perform. The term includes all of the following:
14 a. Taking an acknowledgment.
15 b. Administering an oath or affirmation.
16 c. Taking a verification upon oath or affirmation.
17 d. Witnessing or attesting a signature.
18 e. Certifying or attesting a copy.
19 f. Noting a protest of a negotiable instrument.
20 g. Performing any other duty prescribed by a specific
21 notary public.
22 2. "Electronic notarization system" means
23 hardware, software, or technologies designed to enable an online notary public to
24 perform electronic notarizations.

consider adding limitation
"for a remotely located
individual"

consider added limitation "for a
remotely located individual"

1 3. "Online notarization system provider" means any person that offers the
2 services of an electronic notarization system.

3 (b) The department shall establish and maintain a registration system for
4 online notarization system providers.

5 (c) No person may conduct business in this state as an online notarization
6 system provider unless the person first registers with the department as such.

7 (d) 1. An online notarization system provider may not authorize use of its
8 electronic notarization system by any person other than an online notary public
9 holding a commission under sub. (2m). An online notarization system provider shall
10 establish a method for enrolling online notaries public authorized to use its electronic
11 notarization system.

12 2. Within 5 days after enrolling an online notary public to use its electronic
13 notarization system, an online notarization system provider shall notify the
14 department of the name of the online notary public.

15 (e) Each online notarization system provider shall take reasonable steps to
16 ensure that any online notary public authorized to use its electronic notarization
17 system has the requisite knowledge to perform electronic notarial acts using the
18 system.

19 (f) An online notarization system provider shall ensure that all of the following
20 requirements are satisfied with respect to its electronic notarization system:

21 1. The electronic notarization system incorporates security measures to limit
22 system access and complies with all security standards established by the
23 department under sub. (13) (a) 5.

24 2. The electronic notarization system allows an online notary public to affix the
25 online notary public's electronic signature and electronic notarial seal in a manner

1 that attributes the electronic notarial act to the online notary public and renders the
2 electronic notarial act tamper-evident.

- Since RULONA does not address the separate commission for online notaries public, these sections of our current draft should be included in Wisconsin's RULONA:

3 **SECTION 16.** 137.01 (11) of the statutes is created to read:

4 **137.01 (11) TERMINATION OF NOTARY PUBLIC'S COMMISSION; DESTRUCTION OF**
5 **HARDWARE OR SOFTWARE.** (a) Except as provided in par. (b), if a notary public
6 maintains any coding, disk, certificate, card, software, or password that enables the
7 notary public's electronic signature or electronic seal to be affixed and if the notary
8 public's commission is terminated, the notary public shall destroy the coding, disk,
9 certificate, card, software, or password within 3 months of termination of the notary
10 public's commission.

11 (b) If a notary public's commission is terminated for any reason other than
12 revocation or denial of renewal, the notary public is not required to destroy the
13 coding, disk, certificate, card, software, or password as described in par. (a) if the
14 notary public is recommissioned within 3 months and keeps the same electronic
15 signature and electronic seal.

16 **SECTION 17.** 137.01 (12) of the statutes is created to read:

17 **137.01 (12) WRONGFUL POSSESSION OR DESTRUCTION OF SOFTWARE OR HARDWARE.**
18 Any person who knowingly obtains or destroys, without prior authorization, a
19 certificate, disk, coding, card, program, software, or hardware that enables a notary
20 public's electronic signature or electronic seal to be affixed is guilty of a Class I felony.

- Section 27 of RULONA identifies the rule making authority, the following provision of our current draft should be married into Wisconsin's RULONA:

21 **SECTION 18.** 137.01 (13) of the statutes is created to read:

22 **137.01 (13) RULE MAKING.** (a) The department shall promulgate rules that do
23 all of the following:

24 1. Establish standards for online notaries public holding a commission under
25 sub. (2m).

1 2. Establish a minimum period during which online notaries public shall retain
2 evidence of online notarizations.

3 3. Require applicants for appointment as an online notary public under sub.
4 (2m) to complete a course of instruction and identify all courses of instruction
5 approved by the department to satisfy this requirement.

6 4. Specify the electronic notarial seals described in sub. (3) (c).

7 5. Establish security standards for accessing electronic notarization systems
8 maintained by online notarization system providers under sub. (10).

9 (b) The department may promulgate rules that do any of the following:

10 1. Establish maximum fees that may be charged by an online notary public for
11 performing an online notarization.

12 2. Establish any other standard or requirement, not inconsistent with this
13 section and s. 137.195, relating to online notaries public and online notarizations.

- As to the revisions identified in Pages 19 and 20 of our current draft, we would ask that the State Bar provide feedback as to whether any of these items are of a concern for the estate planners.
- We would ask that the new draft incorporate the comments/requests from the Wisconsin Dept. of Financial Institutions as identified on their 3-page draft attached, which includes new provisions related to powers and authorities granted to the Department.

- Finally, because of privacy concerns, we would ask that the draft include the following prohibited acts section which we've drawn from a Colorado bill:

PROHIBITED ACTS.

(A) NEITHER AN ONLINE NOTARY NOR AN ONLINE NOTARIZATION SYSTEM PROVIDER SHALL SELL, OFFER FOR SALE, USE, OR TRANSFER FOR USE ANY PERSONAL INFORMATION COLLECTED IN THE COURSE OF PERFORMING A NOTARIAL ACT FOR ANY PURPOSE OTHER THAN: (I) COMPLETING THE NOTARIAL ACT; OR (II) AS NECESSARY TO EFFECT, ADMINISTER, ENFORCE, SERVICE, OR PROCESS THE TRANSACTION FOR WHICH THE INFORMATION WAS PROVIDED.

(B) THE PROHIBITION ESTABLISHED IN SUBSECTION _____(A) OF THIS SECTION DOES NOT APPLY WHEN THE NOTARY PUBLIC OR THE ONLINE NOTARIZATION SYSTEM PROVIDER IS:

(I) COMPLYING WITH A REQUEST FROM A REGULATORY AGENCY OR SUPERVISORY AGENCY OR WHEN RESPONDING TO A LAWFUL SUBPOENA OR COURT ORDER; OR

(II) CAUSING A BUSINESS DIVESTITURE, SALE, MERGER, OR ACQUISITION OF ITS BUSINESS INTERESTS WITH ANOTHER PERSON AS PERMITTED UNDER APPLICABLE FEDERAL OR STATE LAW WHEREBY THE PERSONAL INFORMATION IS BEING TRANSFERRED TO ANOTHER PERSON IN THE DUE COURSE OF THE DIVESTITURE, SALE, MERGER, OR ACQUISITION.