



State of Wisconsin
2019 - 2020 LEGISLATURE

Wanted
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LRBs0082/PZ
ARG:amn

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY SUBSTITUTE AMENDMENT,
TO ASSEMBLY BILL 293

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1 AN ACT *to repeal* subchapter I (title) of chapter 137 [precedes 137.01], 137.02,
2 subchapter II (title) of chapter 137 [precedes 137.11] and 706.07; *to renumber*
3 137.01 (title), 137.01 (5), 137.01 (5m), 137.01 (8) and 137.01 (9) (title); *to*
4 *renumber and amend* 137.01 (1), 137.01 (2), 137.01 (3), 137.01 (4), 137.01 (6),
5 137.01 (6m), 137.01 (7) and 137.01 (9); *to amend* 20.575 (1) (g), chapter 137
6 (title), 137.11 (intro.) and (4), 137.12 (1), (2) (intro.), (2m) (intro.), (2p), (2r)
7 (intro.), (3), (4), (5) and (6), 137.13 (1), (2), (4) and (5), 137.14 (intro.) and (3),
8 137.16 (2) (intro.) and (4) (a) and (b), 137.20 (7), 236.21 (2) (a), 236.295 (1) (b),
9 244.05, 244.19 (1), 407.103 (4), 610.60 (2) (a), 703.33 (9), 706.05 (2) (b), 706.05
10 (8), 706.06 (1), 706.085 (2) (a), 708.15 (10) (g), 801.18 (11) (a), 801.18 (11) (e),
11 857.015, 867.045 (2), 867.046 (3), 887.01 (1), 887.01 (3), 887.015 (4) (b) 4., 968.12
12 (2) and 990.01 (38); and *to create* chapter 140 (title), 140.01, 140.02 (2m), (3)

1 (c), (9) (b), (10) and (11), 140.03, 140.04, 140.05, 140.06, 140.07, 140.08, 140.09,
 2 140.10, 140.11, 140.12, 140.13, 140.14, 140.145, 140.15, 140.16, 140.17, 140.18,
 3 140.19, 140.20, 140.24, 140.25, 140.26, 140.27 and 140.31 of the statutes;
 4 **relating to:** commissions for online notaries public, electronic notarizations,
 5 adopting certain provisions of the revised uniform law on notarial acts and
 6 repealing a prior uniform law on notarial acts, commissioners of deeds,
 7 granting rule-making authority, and providing a penalty.

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The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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8 **SECTION 1.** 20.575 (1) (g) of the statutes is amended to read:

9 20.575 (1) (g) *Program fees.* The amounts in the schedule for the purpose of
 10 carrying out general program operations. Except as provided under par. (ka), all
 11 amounts received by the secretary of state, including fees ~~under s. 137.02 and~~ all
 12 moneys transferred from the appropriation under s. 20.144 (1) (g), shall be credited
 13 to this appropriation. Notwithstanding s. 20.001 (3) (a), any unencumbered balance
 14 at the close of a fiscal year exceeding 10 percent of that fiscal year's expenditures
 15 under this appropriation shall lapse to the general fund.

16 **SECTION 2.** Chapter 137 (title) of the statutes is amended to read:

17 **CHAPTER 137**

18 **AUTHENTICATIONS AND ELECTRONIC**

19 **TRANSACTIONS AND RECORDS**

20 **SECTION 3.** Subchapter I (title) of chapter 137 [precedes 137.01] of the statutes
 21 is repealed.

22 **SECTION 4.** 137.01 (title) of the statutes is renumbered 140.02 (title).

1 **SECTION 5.** 137.01 (1) of the statutes is renumbered 140.02 (1), and 140.02 (1)
2 (a), (b), (d), (e) and (g), as renumbered, are amended to read:

3 140.02 (1) (a) ~~The secretary of financial institutions~~ department shall appoint
4 notaries public who shall be United States residents and at least 18 years of age.
5 Applicants who are not attorneys shall file an application with the department of
6 financial institutions and pay a \$20 fee.

7 (b) ~~The secretary of financial institutions~~ department shall satisfy ~~himself or~~
8 herself itself that the applicant has the equivalent of an 8th grade education, is
9 familiar with the duties and responsibilities of a notary public and, subject to ss.
10 111.321, 111.322 and 111.335, does not have an arrest or conviction record.

11 (d) Qualified applicants shall be notified by the department ~~of financial~~
12 ~~institutions~~ to take and file the official oath and execute and file an official bond in
13 the sum of \$500, with a surety executed by a surety company and approved by the
14 ~~secretary of financial institutions~~ department.

15 (e) The qualified applicant shall file his or her signature, post-office address,
16 and an impression of his or her official seal, or imprint of his or her official rubber
17 stamp, with the department ~~of financial institutions~~.

18 (g) At least 30 days before the expiration of a commission the department of
19 ~~financial institutions~~ shall ~~mail~~ ^{strike ↴} provide notice of the expiration date to the holder of a
20 commission.

21 **SECTION 6.** 137.01 (2) of the statutes is renumbered 140.02 (2) and amended
22 to read:

23 140.02 (2) NOTARIES PUBLIC WHO ARE ATTORNEYS. (a) Except as provided in par.
24 (am), any United States resident who is licensed to practice law in this state is
25 entitled to a permanent commission as a notary public upon application to the

1 department of ~~financial institutions~~ and payment of a \$50 fee. The application shall
2 include a certificate of good standing from the supreme court, the signature and
3 post-office address of the applicant and an impression of the applicant's official seal,
4 or imprint of the applicant's official rubber stamp.

5 (am) If a United States resident has his or her license to practice law in this
6 state suspended or revoked, upon reinstatement of his or her license to practice law
7 in this state, the person may be entitled to receive a certificate of appointment as a
8 notary public for a term of 4 years. An eligible notary appointed under this
9 paragraph is entitled to reappointment for 4-year increments. At least 30 days
10 before the expiration of a commission under this paragraph the department of
11 ~~financial institutions~~ shall ^{strike 2} mail ^{provide} notice of the expiration date to the holder of the
12 commission.

13 (b) The ~~secretary of financial institutions~~ department shall issue a certificate
14 of appointment as a notary public to persons who qualify under the requirements of
15 this subsection. The certificate shall state that the notary commission is permanent
16 or is for 4 years.

17 (c) The supreme court shall file with the department of ~~financial institutions~~
18 notice of the surrender, suspension, or revocation of the license to practice law of any
19 attorney who holds a permanent commission as a notary public. Such notice shall
20 be deemed a revocation of said commission.

21 **SECTION 7.** 137.01 (3) of the statutes is renumbered 140.02 (3), and 140.02 (3)

22 (a), as renumbered, is amended to read:

23 140.02 (3) (a) Except as authorized in s. 137.19, and except as provided in par.

24 ^y (c), every notary public shall provide an engraved official seal which makes a distinct
25 and legible impression or official rubber stamp which makes a distinct and legible

1 imprint on paper. The impression of the seal or the imprint of the rubber stamp shall
2 state only the following: "Notary Public," "State of Wisconsin" and the name of the
3 notary. But any notarial seal in use on August 1, 1959, shall be considered in
4 compliance.

5 **SECTION 8.** 137.01 (4) of the statutes is renumbered 140.02 (4), and 140.02 (4)
6 (a) and (b), as renumbered, are amended to read:

7 140.02 (4) (a) Every official act of a notary public shall be attested by the notary
8 public's written signature or electronic signature, ~~as defined in s. 137.11 (8).~~

9 (b) Except as authorized in s. 137.19, and except when a notary public properly
10 uses an ^{official stamp} ~~electronic notarial seal~~ under ~~sub. (3)(c)~~ ^{s. 140.17}, all certificates of acknowledgments
11 of deeds and other conveyances, or any written instrument required or authorized
12 by law to be acknowledged or sworn to before any notary public, within this state,
13 shall be attested by a clear impression of the official seal or imprint of the rubber
14 stamp of said officer, and in addition thereto shall be written or stamped either the
15 day, month and year when the commission of said notary public will expire, or that
16 such commission is permanent.

17 **SECTION 9.** 137.01 (5) of the statutes is renumbered 140.02 (5).

18 **SECTION 10.** 137.01 (5m) of the statutes is renumbered 140.02 (5m).

19 **SECTION 11.** 137.01 (6) of the statutes is renumbered 140.02 (6), and 140.02 (6)
20 (a), as renumbered, is amended to read:

21 140.02 (6) (a) The ~~secretary of financial institutions~~ department may certify
22 to the official qualifications of any notary public and to the genuineness of the notary
23 public's signature and seal or rubber stamp.

24 **SECTION 12.** 137.01 (6m) of the statutes is renumbered 140.02 (6m) and
25 amended to read:

1 140.02 (6m) CHANGE OF RESIDENCE. A notary public does not vacate his or her
2 office by reason of his or her change of residence within the United States. Written
3 notice of any change of address shall be given to the department of financial
4 institutions within 10 days of the change.

5 **SECTION 13.** 137.01 (7) of the statutes is renumbered 140.02 (7) and amended
6 to read:

7 140.02 (7) OFFICIAL RECORDS TO BE FILED. When any notary public ceases to hold
8 office, the notary public, or in case of the notary public's death the notary public's
9 personal representative, shall deposit the notary public's official records and papers
10 with the department of financial institutions. If the notary or personal
11 representative, after the records and papers come to his or her hands, neglects for
12 3 months to deposit them, he or she shall forfeit not less than \$50 nor more than \$500.
13 If any person knowingly destroys, defaces, or conceals any records or papers of any
14 notary public, the person shall forfeit not less than \$50 nor more than \$500, and shall
15 be liable for all damages resulting to the party injured. The department of financial
16 institutions shall receive and safely keep all such papers and records.

17 **SECTION 14.** 137.01 (8) of the statutes is renumbered 140.02 (8).

18 **SECTION 15.** 137.01 (9) (title) of the statutes is renumbered 140.02 (9) (title).

19 **SECTION 16.** 137.01 (9) of the statutes is renumbered 140.02 (9) (a), and 140.02

20 (9) (a) (intro.), as renumbered, is amended to read:

21 140.02 (9) (a) (intro.) - ~~A~~ Except as provided in ~~par. (b)~~, a notary public shall
22 be allowed the following fees: *Fees - CS*

23 **SECTION 17.** 137.02 of the statutes is repealed.

24 **SECTION 18.** Subchapter II (title) of chapter 137 [precedes 137.11] of the
25 statutes is repealed.

when the department has established different fees

s. 140.27 (1) (a) 1.

1 **SECTION 19.** 137.11 (intro.) and (4) of the statutes are amended to read:

2 **137.11 Definitions.** (intro.) In this subchapter chapter:

3 (4) “Contract” means the total legal obligation resulting from the parties’
4 agreement as affected by this subchapter chapter and other applicable law.

5 **SECTION 20.** 137.12 (1), (2) (intro.), (2m) (intro.), (2p), (2r) (intro.), (3), (4), (5)
6 and (6) of the statutes are amended to read:

7 137.12 (1) Except as otherwise provided in sub. (2) and except in ss. 137.25 and
8 137.26, this subchapter chapter applies to electronic records and electronic
9 signatures relating to a transaction.

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

12 (2m) (intro.) This subchapter chapter does not apply to any of the following
13 records or any transaction evidenced by any of the following records:

14 (2p) This subchapter chapter applies to a transaction governed by the federal
15 Electronic Signatures in Global and National Commerce Act, 15 USC 7001, et seq.,
16 but this subchapter chapter is not intended to limit, modify, or supersede 15 USC
17 7001 (c).

18 (2r) (intro.) To the extent that it is excluded from the scope of 15 USC 7003, this
19 subchapter chapter does not apply to a notice to the extent that it is governed by a
20 law requiring the furnishing of any notice of:

21 (3) This subchapter chapter applies to an electronic record or electronic
22 signature otherwise excluded from the application of this subchapter chapter under
23 subs. (2), (2m), and (2r) to the extent it is governed by a law other than those specified
24 in subs. (2), (2m), and (2r).

1 (4) A transaction subject to this ~~subchapter~~ chapter is also subject to other
2 applicable substantive law.

3 (5) This ~~subchapter~~ chapter applies to the state of Wisconsin, unless otherwise
4 expressly provided.

5 (6) To the extent there is a conflict between this ~~subchapter~~ chapter and ch. 407,
6 ch. 407 governs.

7 **SECTION 21.** 137.13 (1), (2), (4) and (5) of the statutes are amended to read:

8 137.13 (1) This ~~subchapter~~ chapter does not require a record or signature to
9 be created, generated, sent, communicated, received, stored, or otherwise processed
10 or used by electronic means or in electronic form.

11 (2) This ~~subchapter~~ chapter applies only to transactions between parties each
12 of which has agreed to conduct transactions by electronic means. Whether the
13 parties agree to conduct a transaction by electronic means is determined from the
14 context and surrounding circumstances, including the parties' conduct.

15 (4) Except as otherwise provided in this ~~subchapter~~ chapter, the effect of any
16 provision of this ~~subchapter~~ chapter may be varied by agreement. Use of the words
17 "unless otherwise agreed," or words of similar import, in this ~~subchapter~~ chapter
18 shall not be interpreted to preclude other provisions of this ~~subchapter~~ chapter from
19 being varied by agreement.

20 (5) Whether an electronic record or electronic signature has legal consequences
21 is determined by this ~~subchapter~~ chapter and other applicable law.

22 **SECTION 22.** 137.14 (intro.) and (3) of the statutes are amended to read:

23 **137.14 Construction.** (intro.) This ~~subchapter~~ chapter shall be construed
24 and applied:

1 **(3)** To effectuate its general purpose to make uniform the law with respect to
2 the subject of this ~~subchapter~~ chapter among states enacting laws substantially
3 similar to the Uniform Electronic Transactions Act as approved and recommended
4 by the National Conference of Commissioners on Uniform State Laws in 1999.

5 **SECTION 23.** 137.16 (2) (intro.) and (4) (a) and (b) of the statutes are amended
6 to read:

7 137.16 **(2)** (intro.) If a law other than this ~~subchapter~~ chapter requires a record
8 to be posted or displayed in a certain manner, to be sent, communicated, or
9 transmitted by a specified method, or to contain information that is formatted in a
10 certain manner, then:

11 **(4)** (a) To the extent a law other than this ~~subchapter~~ chapter requires
12 information to be provided, sent, or delivered in writing but permits that
13 requirement to be varied by agreement, the requirement under sub. (1) that the
14 information be in the form of an electronic record capable of retention may also be
15 varied by agreement; and

16 (b) A requirement under a law other than this ~~subchapter~~ chapter to send,
17 communicate, or transmit a record by 1st-class or regular mail or with postage
18 prepaid may be varied by agreement to the extent permitted by the other law.

19 **SECTION 24.** 137.20 (7) of the statutes is amended to read:

20 137.20 **(7)** The public records board may promulgate rules prescribing
21 standards consistent with this ~~subchapter~~ chapter for retention of records by state
22 agencies, the University of Wisconsin Hospitals and Clinics Authority and local
23 governmental units.

24 **SECTION 25.** Chapter 140 (title) of the statutes is created to read:

25

CHAPTER 140

1 **NOTARIES PUBLIC; NOTARIAL ACTS**

2 **SECTION 26.** 140.01 of the statutes is created to read:

3 **140.01 Definitions.** In this chapter:

4 (1) "Acknowledgment" means a declaration by an individual before a notarial
5 officer that the individual has signed a record for the purpose stated in the record
6 and, if the record is signed in a representative capacity, that the individual signed
7 the record with proper authority and signed it as the act of the individual or entity
8 identified in the record.

9 (2) "Department" means the department of financial institutions.

10 (3) "Domestic partner" has the meaning given in s. 770.01 (1).

11 (4) "Electronic" means relating to technology having electrical, digital,
12 magnetic, wireless, optical, electromagnetic, or similar capabilities.

13 (5) "Electronic signature" means an electronic symbol, sound, or process
14 attached to or logically associated with a record and executed or adopted by an
15 individual with the intent to sign the record.

16 (6) "In a representative capacity" means acting as any of the following:

17 (a) An authorized officer, agent, partner, trustee, or other representative for a
18 person other than an individual.

19 (b) A public officer, personal representative, guardian, or other representative,
20 in the capacity stated in a record.

21 (c) An agent or attorney-in-fact for a principal.

22 (d) An authorized representative of another in any other capacity.

23 (7) "Notarial act" means an act, whether performed with respect to a tangible
24 or electronic record, that a notarial officer may perform under the law of this state.
25 The term includes taking an acknowledgment, administering an oath or affirmation,

1 taking a verification on oath or affirmation, witnessing or attesting a signature,
2 certifying or attesting a copy, and noting a protest of a negotiable instrument.

3 (8) "Notarial officer" means a notary public or other individual authorized to
4 perform a notarial act.

5 (9) Except in s. 140.02 (2m) (a) 5., "notary public" means an individual
6 commissioned to perform a notarial act by the department.

7 (10) "Official stamp" means a physical image affixed to or embossed on a
8 tangible record or an electronic image attached to or logically associated with an
9 electronic record.

10 (11) "Online notarial act" or "online notarization" means a notarial act
11 performed by means of communication technology, as defined in s. 140.145 (1) (c),
12 that meets any standard established by the department.

13 (12) (12) "Person" means an individual, corporation, business trust, statutory trust,
14 estate, trust, partnership, limited liability company, association, joint venture,
15 public corporation, government or governmental subdivision, agency, or
16 instrumentality, or any other legal or commercial entity.

17 (13) (13) "Record" means information that is inscribed on a tangible medium or that
18 is stored in an electronic or other medium and is retrievable in perceivable form.

19 (14) (14) "Sign" means, with present intent to authenticate or adopt a record, any
20 of the following:

21 (a) To execute or adopt a tangible symbol.

22 (b) To attach to or logically associate with the record an electronic symbol,
23 sound, or process.

24 (15) (15) "Signature" means a tangible symbol or an electronic signature that
25 evidences the signing of a record.

1 (15) (16) "Stamping device" means any of the following:

2 (a) A physical device capable of affixing to or embossing on a tangible record
3 an official stamp.

4 (b) An electronic device or process capable of attaching to or logically
5 associating with an electronic record an official stamp.

6 (16) (17) "State" means a state of the United States, the District of Columbia,
7 Puerto Rico, the U.S. Virgin Islands, or any territory or insular possession subject
8 to the jurisdiction of the United States.

9 (17) (18) "Tamper-evident" means that any change to a record generates evidence
10 of the change.

11 (18) (19) "Verification on oath or affirmation" means a declaration, made by an
12 individual on oath or affirmation before a notarial officer, that a statement in a record
13 is true.

14 **SECTION 27.** 140.02 (2m), (3) (c), (9) (b), (10) and (11) of the statutes are created
15 to read:

16 140.02 (2m) **ONLINE NOTARIES PUBLIC; APPLICATION AND COMMISSION.** (a) A notary
17 public holding a commission under sub. (1) or (2) may also apply to the department
18 for a commission as an online notary public. The application shall include, at a
19 minimum, all of the following:

- 20 1. The applicant's name to be used in acting as an online notary public.
- 21 2. A certification that the applicant will comply with any standard established
22 by the department under s. 140.27 (1) (a) 1.
- 23 3. A certification that the applicant will use tamper-evident technologies to
24 perform online notarizations and will have the capability to retain the evidence of

1 these online notarizations for any period established by the department under s.
2 140.27 (1) (a) 2.

3 4. Proof that, if required, the applicant has completed a course of instruction
4 approved by the department as provided in s. 140.27 (1) (a) 3.

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

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

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

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

22 (9) (b) Subject to any rule promulgated under s. 140.27 (1) (a) 6., an online
23 notary public may charge any fee for the performance of an online notarization.<

24 (10) TERMINATION OF NOTARY PUBLIC'S COMMISSION; DESTRUCTION OF HARDWARE OR
25 SOFTWARE. (a) Except as provided in par. (b), if a notary public maintains any coding,

1 disk, certificate, card, software, or password that enables the notary public's
 2 electronic signature or electronic seal to be affixed and if the notary public's
 3 commission is terminated, the notary public shall destroy the coding, disk,
 4 certificate, card, software, or password within 3 months of termination of the notary
 5 public's commission.

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

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

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15 **SECTION 28.** 140.03 of the statutes is created to read:

16 **140.03 Online notarization system providers.** (1) In this section:

17 (a) "Electronic notarial act" or "electronic notarization" means an act that an
 18 online notary public is authorized to perform for a remotely located individual. The
 19 term includes all of the following:

- 20 1. Taking an acknowledgment.
- 21 2. Administering an oath or affirmation.
- 22 3. Taking a verification upon oath or affirmation.
- 23 4. Witnessing or attesting a signature.
- 24 5. Certifying or attesting a copy.
- 25 6. Noting a protest of a negotiable instrument.

1 7. Performing any other duty prescribed by a specific statute for an online
2 notary public.

3 (b) "Electronic notarization system" means a set of applications, programs,
4 hardware, software, or technologies designed to enable an online notary public to
5 perform electronic notarizations for a remotely located individual.

6 (c) "Online notarization system provider" means any person that offers the
7 services of an electronic notarization system.

8 (2) The department shall establish and maintain a registration system for
9 online notarization system providers.

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

12 (4) (a) An online notarization system provider may not authorize use of its
13 electronic notarization system by any person other than an online notary public
14 holding a commission under s. 140.02 (2m). An online notarization system provider
15 shall establish a method for enrolling online notaries public authorized to use its
16 electronic notarization system.

17 (b) Within 5 days after enrolling an online notary public to use its electronic
18 notarization system, an online notarization system provider shall notify the
19 department of the name of the online notary public.

20 (5) Each online notarization system provider shall take reasonable steps to
21 ensure that any online notary public authorized to use its electronic notarization
22 system has the requisite knowledge to perform electronic notarial acts using the
23 system.

24 (6) An online notarization system provider shall ensure that all of the following
25 requirements are satisfied with respect to its electronic notarization system:

1 ~~(a) The electronic notarization system incorporates security measures to limit~~
 2 ~~system access and complies with all security standards established by the~~
 3 ~~department under s. 140.27 (1) (a) 5.~~

4 ~~(b) The electronic notarization system allows an online notary public to affix~~
 5 ~~the online notary public's electronic signature and electronic notarial seal in a~~
 6 ~~manner that attributes the electronic notarial act to the online notary public and~~
 7 ~~renders the electronic notarial act tamper-evident.~~

8 **SECTION 29.** 140.04 of the statutes is created to read:

9 **140.04 Authority to perform notarial act. (1)** A notarial officer may
 10 perform a notarial act authorized by this chapter or by law of this state other than
 11 this chapter.

12 **(2)** A notarial officer may not perform a notarial act with respect to a record to
 13 which the officer or the officer's spouse or domestic partner is a party or in which
 14 either of them has a direct beneficial interest. A notarial act performed in violation
 15 of this subsection is voidable.

16 **(3)** A notarial officer may certify that a tangible copy of an electronic record is
 17 an accurate copy of the electronic record.

18 **SECTION 30.** 140.05 of the statutes is created to read:

19 **140.05 Requirements for certain notarial acts. (1)** A notarial officer who
 20 takes an acknowledgment of a record shall determine, from personal knowledge or
 21 satisfactory evidence of the identity of the individual, that the individual appearing
 22 before the officer and making the acknowledgment has the identity claimed and that
 23 the signature on the record is the signature of the individual.

24 **(2)** A notarial officer who takes a verification of a statement on oath or
 25 affirmation shall determine, from personal knowledge or satisfactory evidence of the

1 identity of the individual, that the individual appearing before the officer and
2 making the verification has the identity claimed and that the signature on the
3 statement verified is the signature of the individual.

4 (3) A notarial officer who witnesses or attests to a signature shall determine,
5 from personal knowledge or satisfactory evidence of the identity of the individual,
6 that the individual appearing before the officer and signing the record has the
7 identity claimed.

8 (4) A notarial officer who certifies or attests a copy of a record or an item that
9 was copied shall determine that the copy is a full, true, and accurate transcription
10 or reproduction of the record or item.

11 (5) A notarial officer who makes or notes a protest of a negotiable instrument
12 shall determine the matters set forth in s. 403.505 (2).

13 **SECTION 31.** 140.06 of the statutes is created to read:

14 **140.06 Personal appearance required.** If a notarial act relates to a
15 statement made in or a signature executed on a record, the individual making the
16 statement or executing the signature shall appear personally before the notarial
17 officer.

18 **SECTION 32.** 140.07 of the statutes is created to read:

19 **140.07 Identification of individual.** (1) A notarial officer has personal
20 knowledge of the identity of an individual appearing before the officer if the
21 individual is personally known to the officer through dealings sufficient to provide
22 reasonable certainty that the individual has the identity claimed.

23 (2) A notarial officer has satisfactory evidence of the identity of an individual
24 appearing before the officer if the officer can identify the individual in any of the
25 following ways:

1 (a) By means of any of the following:

2 1. A passport, vehicle operator's license, or government-issued identification
3 card, which is current or expired not more than 3 years before performance of the
4 notarial act.

5 2. Another form of government identification issued to an individual, which is
6 current or expired not more than 3 years before performance of the notarial act,
7 contains the signature or a photograph of the individual, and is satisfactory to the
8 officer.

9 (b) By a verification on oath or affirmation of a credible witness personally
10 appearing before the officer and known to the officer or whom the officer can identify
11 on the basis of a passport, vehicle operator's license, or government-issued
12 identification card, which is current or expired not more than 3 years before
13 performance of the notarial act.

14 (3) A notarial officer may require an individual to provide additional
15 information or identification credentials necessary to assure the officer of the
16 identity of the individual.

17 **SECTION 33.** 140.08 of the statutes is created to read:

18 **140.08 Authority to refuse to perform notarial act.** (1) A notarial officer
19 may refuse to perform a notarial act if the officer is not satisfied with respect to any
20 of the following:

21 (a) That the individual executing the record is competent or has the capacity
22 to execute the record.

23 (b) That the individual's signature is knowingly and voluntarily made.

24 (2) A notarial officer may refuse to perform a notarial act unless refusal is
25 prohibited by law other than this chapter.

1 **SECTION 34.** 140.09 of the statutes is created to read:

2 **140.09 Signature if individual unable to sign.** If an individual is physically
3 unable to sign a record, the individual may direct an individual other than the
4 notarial officer to sign the individual’s name on the record. The notarial officer shall
5 insert “Signature affixed by (name of other individual) at the direction of (name of
6 individual)” or words of similar import.

7 **SECTION 35.** 140.10 of the statutes is created to read:

8 **140.10 Notarial act in this state.** (1) A notarial act may be performed ^{within} in this
9 state by any of the following: *persons of this state*

- 10 (a) A notary public of this state.
- 11 (b) A judge, clerk, or deputy clerk of a court of record.
- 12 (c) A court commissioner.
- 13 (d) A register of deeds or deputy register of deeds.
- 14 (e) A municipal judge.
- 15 (f) A county clerk or deputy county clerk.

****NOTE: Sub. (1), above, basically retains the list of notarial officers in current s. 706.07 (3) (a). RULONA refers to a “notary public of this state,” but RULONA also defines a notary public in a limited way to be only a notary public holding a commission by DFI, so it is unclear what the phrase “of this state” adds. I note that RULONA also seems to sometimes use the term “notary public” in a manner inconsistent with its definition, which is limited to a Wisconsin-commissioned notary public.

16 **(2)** The signature and title of an individual performing a notarial act in this
17 state are prima facie evidence that the signature is genuine and that the individual
18 holds the designated title.

19 **(3)** The signature and title of a notarial officer described in sub. (1) conclusively
20 establish the authority of the officer to perform the notarial act.

21 **SECTION 36.** 140.11 of the statutes is created to read:

1 **140.11 Notarial act in another state. (1)** A notarial act performed in
2 another state has the same effect under the law of this state as if performed by a
3 notarial officer of this state, if the act performed in that state is performed by any of
4 the following:

5 (a) A notary public of that state.

6 (b) A judge, clerk, or deputy clerk of a court of that state.

7 (c) Any other individual authorized by the law of that state to perform the
8 notarial act.

9 **(2)** The signature and title of an individual performing a notarial act in another
10 state are prima facie evidence that the signature is genuine and that the individual
11 holds the designated title.

12 **(3)** The signature and title of a notarial officer described in sub. (1) (a) or (b)
13 conclusively establish the authority of the officer to perform the notarial act.

14 **SECTION 37.** 140.12 of the statutes is created to read:

15 **140.12 Notarial act under authority of federally recognized Indian**
16 **tribe. (1)** A notarial act performed under the authority and in the jurisdiction of
17 a federally recognized Indian tribe has the same effect as if performed by a notarial
18 officer of this state, if the act performed in the jurisdiction of the tribe is performed
19 by any of the following:

20 (a) A notary public of the tribe.

21 (b) A judge, clerk, or deputy clerk of a court of the tribe.

22 (c) Any other individual authorized by the law of the tribe to perform the
23 notarial act.

24 **(2)** The signature and title of an individual performing a notarial act under the
25 authority of and in the jurisdiction of a federally recognized Indian tribe are prima

1 facie evidence that the signature is genuine and that the individual holds the
2 designated title.

3 **(3)** The signature and title of a notarial officer described in sub. (1) (a) or (b)
4 conclusively establish the authority of the officer to perform the notarial act.

5 **SECTION 38.** 140.13 of the statutes is created to read:

6 **140.13 Notarial act under federal authority.** (1) A notarial act performed
7 under federal law has the same effect under the law of this state as if performed by
8 a notarial officer of this state, if the act performed under federal law is performed by
9 any of the following:

10 (a) A judge, clerk, or deputy clerk of a court.

11 (b) An individual in military service or performing duties under the authority
12 of military service who is authorized to perform notarial acts under federal law.

13 (c) An individual designated a notarizing officer by the federal department of
14 state for performing notarial acts overseas.

15 (d) Any other individual authorized by federal law to perform the notarial act.

16 **(2)** The signature and title of an individual acting under federal authority and
17 performing a notarial act are prima facie evidence that the signature is genuine and
18 that the individual holds the designated title.

19 **(3)** The signature and title of an officer described in sub. (1) (a), (b), or (c)
20 conclusively establish the authority of the officer to perform the notarial act.

21 **SECTION 39.** 140.14 of the statutes is created to read:

22 **140.14 Foreign notarial act.** (1) In this section, “foreign state” means a
23 government other than the United States, a state, or a federally recognized Indian
24 tribe.

1 (2) If a notarial act is performed under authority and in the jurisdiction of a
2 foreign state or constituent unit of the foreign state or is performed under the
3 authority of a multinational or international governmental organization, the act has
4 the same effect under the law of this state as if performed by a notarial officer of this
5 state.

6 (3) If the title of office and indication of authority to perform notarial acts in
7 a foreign state appear in a digest of foreign law or in a list customarily used as a
8 source for that information, the authority of an officer with that title to perform
9 notarial acts is conclusively established.

10 (4) The signature and official stamp of an individual holding an office described
11 in sub. (3) are prima facie evidence that the signature is genuine and the individual
12 holds the designated title.

13 (5) An apostille in the form prescribed by the Hague Convention of October 5,
14 1961, and issued by a foreign state party to the convention conclusively establishes
15 that the signature of the notarial officer is genuine and that the officer holds the
16 indicated office.

17 (6) A consular authentication issued by an individual designated by the federal
18 department of state as a notarizing officer for performing notarial acts overseas and
19 attached to the record with respect to which the notarial act is performed
20 conclusively establishes that the signature of the notarial officer is genuine and that
21 the officer holds the indicated office.

22 **SECTION 40.** 140.145 of the statutes is created to read:

23 **140.145 Online notarization. (1) DEFINITIONS.** In this section:

24 (a) "Credential" means a tangible record evidencing the identity of a person.

11/20/23

1 (b) "Credential analysis" means a process or service that complies with any
2 rules promulgated by the department through which a 3rd party affirms the validity
3 of a government-issued credential or any data thereon through review of public and
4 proprietary data sources.

5 (c) "Communication technology" means an electronic device or process that
6 allows an individual physically in one location and a notary public physically located
7 at another location in this state to communicate with each other in real time by sight
8 and sound.

9 (e) "Identity proofing" means a process or service through which a 3rd party
10 affirms the identity of an individual through review of personal information from
11 public and proprietary data sources and that operates in compliance with any
12 standard established by the department.

13 (f) "Online notary public" means a person appointed and holding a commission
14 under s. 140.02 (2m).

15 (g) "Principal" means any of the following:

16 1. An individual whose electronic signature is notarized in an online
17 notarization.

18 2. An individual taking an oath or affirmation from an online notary public but
19 not in the capacity of a witness for the online notarial act.

20 (h) "Real time" means the actual span of uninterrupted time during which all
21 parts of an online notarial act occur.

22 (i) "Remote presentation" means the transmission to an online notary public
23 through communication technology of an image of a government-issued credential
24 that is of sufficient quality to enable the online notary public to do all of the following:

25 1. Identify the individual appearing before the online notary public.

1 2. Perform a credential analysis.

2 (j) "United States" has the meaning given in s. 990.01 (44) but also includes a
3 tribe, as defined in s. 822.02 (16).

4 **(2) AUTHORITY TO PERFORM ONLINE NOTARIZATIONS.** (a) An online notary public
5 may perform online notarial acts for a person who is physically located in the United
6 States.

7 (am) An online notary public may perform online notarial acts for a person who
8 is physically located outside the United States if all of the following apply:

9 1. The online notarial act is not, to the notary's actual knowledge, prohibited
10 in the jurisdiction where the person is physically located at the time of the online
11 notarial act.

12 2. The online notarial act relates to any of the following:

13 a. A matter that is before a court, a governmental entity, or another entity in
14 the United States.

15 b. Property located in the United States.

16 c. A transaction substantially connected to the United States.

17 (b) An online notary public must be physically located in this state in order to
18 perform the online notarial act.

19 (c) A person who is not commissioned as an online notary public may not
20 perform an online notarial act.

21 **(3) ONLINE NOTARIZATION PROCEDURES.** (a) An online notary public shall verify
22 the identity of the person creating the electronic signature at the time the signature
23 is taken by using communication technology that meets the requirements of this
24 section and any rule promulgated by the department. The identity may be verified
25 by any of the following:

- 1 1. The online notary public's personal knowledge of the person creating the
2 electronic signature.
- 3 2. The occurrence of all of the following:
 - 4 a. The principal's remote presentation of a government-issued credential,
5 including a passport or operator's license, that contains a signature and photograph
6 of the principal.
 - 7 b. The online notary public's application of credential analysis to the credential
8 under subd. 2. a.
 - 9 c. The online notary public's use of identity proofing with respect to the
10 principal making the remote presentation under subd. 2. a.
- 11 (b) The online notary public shall take reasonable steps to ensure that the
12 communication technology used for the online notarization is secure from
13 unauthorized use.
- 14 (c) A principal for whom an online notarization is performed under this section
15 is considered, for purposes of any other law, to appear personally before and be in the
16 physical presence of the online notary public at the time of the online notarial act.
- 17 (d) 1. For each online notarial act performed under this section, the online
18 notary public shall prepare an electronic certificate of notarial act that satisfies the
19 requirements under this paragraph and s. 140.15.
- 20 2. The electronic certificate of notarial act for an online notarial act shall clearly
21 indicate that the principal appeared by remote presentation, and the face of the
22 notarized record shall clearly indicate that it was notarized by means of an online
23 notarial act. For purposes of this paragraph and s. 140.15, a principal for whom an
24 online notarial act is performed is considered to be before the online notary public.

1 An electronic certificate of notarial act for an online notarial act shall be in lieu of any
2 written certificate.

3 3. For purposes of determining the jurisdiction in which an online notarial act
4 is performed, the location of the online notary public shall be determinative. The
5 commission expiration date appearing on the certificate shall be the expiration date
6 of the commission as an online notary public, regardless of any other commission the
7 notary public holds. The online notary public shall use on the electronic certificate
8 the electronic notarial seal under s. 140.02 (3) (c).

9 4. By executing an electronic certificate of notarial act under this paragraph,
10 the online notary public certifies that the online notary public has acted in
11 compliance with this chapter, except that s. 140.15 (4) does not apply with respect
12 to an electronic certificate of notarial act.

13 (e) An online notarial act performed under this section involving the principal's
14 remote presentation shall comply with the following minimum standards:

15 1. The online notary public shall use identity proofing that includes
16 knowledge-based authentication with at least the following minimum security
17 characteristics:

18 a. The principal shall be presented with 5 or more questions with a minimum
19 of 5 possible answer choices per question.

20 b. Each question under subd. 1. a. shall be drawn from a 3rd-party provider
21 of public and proprietary data sources and be identifiable to the principal's social
22 security number or other identification information or the principal's identity and
23 historical events records.

24 c. Responses to all questions under subd. 1. a. shall be made within a 2-minute
25 time constraint.

1 d. The principal shall answer a minimum of 80 percent of the questions
2 correctly.

3 e. The principal may be offered an additional attempt in the event of a failed
4 first attempt.

5 f. During a 2nd attempt, the principal may not be presented with more than
6 3 questions from the prior attempt.

7 2. The online notary public shall confirm that the principal's credential is valid
8 and matches the principal's claimed identity by using credential analysis consisting
9 of one or more automated software or hardware processes that scan the credential,
10 including its format features, data, bar codes, or other security elements.

11 **(4) ELECTRONIC RECORD OF ONLINE NOTARIZATIONS.** (a) Subject to par. (e), an
12 online notary public shall keep electronic records for online notarized documents and
13 shall maintain the security of these records. These records shall include all of the
14 following:

15 1. The date and time of the online notarial act.

16 2. The type of online notarial act.

17 3. A description of the online proceeding.

18 4. The name and address of each principal involved in the proceeding.

19 5. A notation of the type of credential provided by each principal involved in the
20 proceeding to the online notary public.

21 6. The fee, if any, charged for the notarization.

22 (b) The online notary public shall create an audio and video copy of the
23 performance of the online notarial act, which recording may provide satisfactory
24 evidence of identification.

1 (c) The online notary public shall take reasonable steps to ensure the integrity
2 and security of online notarizations, maintain a backup for all electronic records, and
3 protect the backup records from unauthorized access and use.

4 (d) All electronic records shall be maintained for at least 7 years after the date
5 of the transaction or proceeding associated with the record.

6 (e) An online notary public may, by written agreement, designate a repository
7 to maintain the electronic records required under par. (a) and the audio and video
8 recordings required under par. (b). The written agreement shall require the
9 repository to maintain the security of these electronic records and to meet all
10 applicable requirements of this paragraph and par. (c). The repository may be the
11 employer of the online notary public.

12 **(5) USE OF ELECTRONIC RECORD, SIGNATURE, AND SEAL.** (a) An online notary public
13 shall take reasonable steps to ensure registered devices used to create electronic
14 signatures are current and have not been revoked or terminated by the devices'
15 issuing authority.

16 (b) An online notary public may not allow another person to use the online
17 notary public's electronic signature.

18 (c) An online notary public shall immediately report to the department any loss,
19 theft, or vandalism of the online notary public's electronic signature or electronic
20 seal.

21 **(6) GOVERNING LAW.** The validity of an online notarial act shall be determined
22 by applying the laws of this state, regardless of the physical location of the principal
23 at time of the online notarial act.

24 **SECTION 41.** 140.15 of the statutes is created to read:

1 **140.15 Certificate of notarial act.** (1) A notarial act must be evidenced by
2 a certificate. The certificate must satisfy all of the following:

3 (a) Be executed contemporaneously with the performance of the notarial act.

4 (b) Be signed and dated by the notarial officer and, if the notarial officer is a
5 notary public, be signed in the same manner as on file with the department.

6 (c) Identify the jurisdiction in which the notarial act is performed.

7 (d) Contain the title of office of the notarial officer.

8 (e) If the notarial officer is a notary public, indicate the date of expiration, if any,
9 of the officer's commission.

10 (2) If a notarial act regarding a tangible record is performed by a notary public,
11 an official stamp must be affixed to or embossed on the certificate. If a notarial act
12 is performed regarding a tangible record by a notarial officer other than a notary
13 public and the certificate contains the information specified in sub. (1) (b), (c), and
14 (d), an official stamp may be affixed to or embossed on the certificate. If a notarial
15 act regarding an electronic record is performed by a notarial officer and the
16 certificate contains the information specified in sub. (1) (b), (c), and (d), an official
17 stamp may be attached to or logically associated with the certificate.

18 (3) A certificate of a notarial act is sufficient if it meets the requirements of
19 subs. (1) and (2) and satisfies any of the following:

20 (a) Is in a short form set forth in s. 140.16.

21 (b) Is in a form otherwise permitted by the law of this state.

22 (c) Is in a form permitted by the law applicable in the jurisdiction in which the
23 notarial act was performed.

1 (d) Sets forth the actions of the notarial officer and the actions are sufficient
2 to meet the requirements of the notarial act as provided in ss. 140.05, 140.06, and
3 140.07 or law of this state other than this chapter.

4 (4) By executing a certificate of a notarial act, a notarial officer certifies that
5 the officer has complied with the requirements and made the determinations
6 specified in ss. 140.04, 140.05, and 140.06.

7 (5) A notarial officer may not affix the officer's signature to, or logically
8 associate it with, a certificate until the notarial act has been performed.

9 (6) If a notarial act is performed regarding a tangible record, a certificate must
10 be part of, or securely attached to, the record. If a notarial act is performed regarding
11 an electronic record, the certificate must be affixed to, or logically associated with,
12 the electronic record. If the department has established standards pursuant to s.
13 140.27 for attaching, affixing, or logically associating the certificate, the process
14 must conform to the standards.

15 **SECTION 42.** 140.16 of the statutes is created to read:

16 **140.16 Short form certificates.** The following short form certificates of
17 notarial acts are sufficient for the purposes indicated, if completed with the
18 information required by s. 140.15 (1) and (2):

19 (1) For an acknowledgment in an individual capacity:

20 State of

21 County of

22 This record was acknowledged before me on ... (date) by (name(s) of
23 individual(s)).

24 (Signature of notarial officer)

25 Stamp

1 (Title of office)

2 [My commission expires:]

3 **(2)** For an acknowledgment in a representative capacity:

4 State of

5 County of

6 This record was acknowledged before me on (date) by (name(s) of
7 individual(s)) as (type of authority, such as officer or trustee) of (name of party
8 on behalf of whom record was executed).

9 (Signature of notarial officer)

10 Stamp

11 (Title of office)

12 [My commission expires:]

13 **(3)** For a verification on oath or affirmation:

14 State of

15 County of

16 Signed and sworn to (or affirmed) before me on (date) by (name(s) of
17 individual(s) making statement).

18 (Signature of notarial officer)

19 Stamp

20 (Title of office)

21 [My commission expires:]

22 **(4)** For witnessing or attesting a signature:

23 State of

24 County of

25 Signed [or attested] before me on (date) by (name(s) of individual(s)).

1 (Signature of notarial officer)

2 Stamp

3 (Title of office)

4 [My commission expires:]

or attesting

5 (5) For certifying a copy of a record:

6 State of ...

7 County of ... *or attest*

8 I certify that this is a true and correct copy of a record in the possession of

9 Dated:

10(Signature of notarial officer)

11 Stamp

12 (Title of office)

13 [My commission expires:]

14 **SECTION 43.** 140.17 of the statutes is created to read:

15 **140.17 Official stamp.** The official stamp of a notary public must satisfy all
16 of the following criteria:

17 (1) Include the notary public's name, jurisdiction, commission expiration date
18 if applicable, and other information required by the department.

19 (2) Be capable of being copied together with the record to which it is affixed or
20 attached or with which it is logically associated.

21 **SECTION 44.** 140.18 of the statutes is created to read:

22 **140.18 Stamping device.** (1) (a) A notary public is responsible for the
23 security of the notary public's stamping device and may not allow another individual
24 to use the device to perform a notarial act.

1 (b) On resignation from, or the revocation or expiration of, the notary public's
2 commission, or on the expiration of the date set forth in the stamping device, if any,
3 the notary public shall disable the stamping device by destroying, defacing,
4 damaging, erasing, or securing it against use in a manner that renders it unusable.

5 (c) On the death or adjudication of incompetency of a notary public, the notary
6 public's personal representative or guardian or any other person knowingly in
7 possession of the stamping device shall render it unusable by destroying, defacing,
8 damaging, erasing, or securing it against use in a manner that renders it unusable.

9 (2) If a notary public's stamping device is lost or stolen, the notary public or the
10 notary public's personal representative or guardian shall promptly notify the
11 department on discovering that the device is lost or stolen.

12 **SECTION 45.** 140.19 of the statutes is created to read:

13 **140.19 Journal.** (1) A notary public, other than an individual licensed to
14 practice law in this state, shall maintain a journal in which the notary public
15 chronicles all notarial acts that the notary public performs. The notary public shall
16 retain the journal for 10 years after the performance of the last notarial act
17 chronicled in the journal.

18 (2) A journal may be created on a tangible medium or in an electronic format.
19 A notary public shall maintain only one journal at a time to chronicle all notarial acts,
20 whether those notarial acts are performed regarding tangible or electronic records.
21 If the journal is maintained on a tangible medium, it must be a permanent, bound
22 register with numbered pages. If the journal is maintained in an electronic format,
23 it must be in a permanent, tamper-evident electronic format complying with the
24 rules of the department.

1 **(3)** An entry in a journal must be made contemporaneously with performance
2 of the notarial act and contain all of the following information:

3 (a) The date and time of the notarial act.

4 (b) A description of the record, if any, and type of notarial act.

5 (c) The full name and address of each individual for whom the notarial act is
6 performed.

7 (d) If identity of the individual is based on personal knowledge, a statement to
8 that effect.

9 (e) If identity of the individual is based on satisfactory evidence, a brief
10 description of the method of identification and the identification credential
11 presented, if any, including the date of issuance and expiration of any identification
12 credential.

13 (f) The fee, if any, charged by the notary public.

14 **(4)** If a notary public's journal is lost or stolen, the notary public shall promptly
15 notify the department on discovering that the journal is lost or stolen.

16 **(5)** On resignation from, or the revocation or suspension of, a notary public's
17 commission, the notary public shall retain the notary public's journal in accordance
18 with sub. (1) and inform the department where the journal is located.

19 **(6)** Instead of retaining a journal as provided in subs. (1) and (5), a current or
20 former notary public may transmit the journal to the department or a repository
21 approved by the department.

22 **(7)** On the death or adjudication of incompetency of a current or former notary
23 public, the notary public's personal representative or guardian or any other person
24 knowingly in possession of the journal shall transmit it to the department or a
25 repository approved by the department.

for a remotely located individual under s. 140.145'

for remotely located individuals

1 SECTION 46. 140.20 of the statutes is created to read:

2 140.20 Notification regarding performance of notarial act) on
3 electronic record; selection of technology; acceptance of tangible copy of
4 electronic record. (1) A notary public may select one or more tamper-evident
5 technologies to perform notarial acts with respect to electronic records. A person may
6 not require a notary public to perform a notarial act with respect to an electronic
7 record with a technology that the notary public has not selected.

8 (2) Before a notary public performs the notary public's initial notarial act with
9 respect to an electronic record, ^{the} a notary public shall notify the department that the
10 notary public will be performing notarial acts ^{for remotely located individuals under s. 140.145'} with respect to electronic records and
11 identify the technology the notary public intends to use. If the department has
12 established standards for approval of technology pursuant to s. 140.27, the
13 technology must conform to the standards. If the technology conforms to the
14 standards, the department shall approve the use of the technology.

15 (3) A recorder ^{register of deeds} may accept for recording a tangible copy of an electronic record
16 containing a notarial certificate as satisfying any requirement that a record accepted
17 for recording be an original, if the notarial officer executing the notarial certificate
18 certifies ^{or attests} that the tangible copy is an accurate copy of the electronic record.

****NOTE: The instructions provide for the omission of RULONA section 21 (relating to DFT's criteria and process for issuing notary public commissions), as the relevant current law provisions in s. 137.01 (as modified) are incorporated instead. I have also omitted RULONA sections 22 ("Examination of notary public") and 23 ("Grounds to deny, refuse to renew, revoke, suspend, or condition commission of notary public"), which are in substance and concept tied to section 21. If you would like these provisions included in the draft, please provide instruction on how you would like to integrate them into s. 140.02 of the draft.

19 SECTION 47. 140.24 of the statutes is created to read:

20 140.24 Database of notaries public. The department shall maintain an
21 electronic database of notaries public to which all of the following apply:

1 (1) A person may verify through the database the authority of a notary public
2 to perform notarial acts.

3 (2) The database indicates whether a notary public has notified the
4 department that the notary public will be performing notarial acts on electronic
5 records. *for remotely located individuals under s. 140.145'*

6 **SECTION 48.** 140.25 of the statutes is created to read:

7 **140.25 Prohibited acts.** (1) A commission as a notary public does not
8 authorize an individual to do any of the following:

9 (a) Assist persons in drafting legal records, give legal advice, or otherwise
10 practice law.

11 (b) Act as an immigration consultant or an expert on immigration matters.

12 (c) Represent a person in a judicial or administrative proceeding relating to
13 immigration to the United States, U.S. citizenship, or related matters.

14 (d) Receive compensation for performing any of the activities listed in pars. (a)
15 to (c).

16 (2) A notary public may not engage in false or deceptive advertising.

17 (3) A notary public, other than an attorney licensed to practice law in this state,
18 may not use the term "notario" or "notario publico."

19 (4) A notary public, other than an attorney licensed to practice law in this state,
20 may not advertise or represent that the notary public may assist persons in drafting
21 legal records, give legal advice, or otherwise practice law. If a notary public who is
22 not an attorney licensed to practice law in this state in any manner advertises or
23 represents that the notary public offers notarial services, whether orally or in a
24 record, including broadcast media, print media, and the Internet, the notary public
25 shall include the following statement, or an alternate statement authorized or

1 required by the department, in the advertisement or representation, prominently
2 and in each language used in the advertisement or representation: "I am not an
3 attorney licensed to practice law in this state. I am not allowed to draft legal records,
4 give advice on legal matters, including immigration, or charge a fee for those
5 activities." If the form of advertisement or representation is not broadcast media,
6 print media, or the Internet and does not permit inclusion of the statement required
7 by this subsection because of size, it must be displayed prominently or provided at
8 the place of performance of the notarial act before the notarial act is performed.

****NOTE: The provisions of RULONA in subs. (1), (3), and (4), above, overlap with provisions of current law in s. 137.01 (1) (i) and (j) (renumbered s. 140.02 (1) (i) and (j) in this draft). Please advise which provisions you wish to retain and which provisions should be removed or repealed.

9 (5) Except as otherwise allowed by law, a notary public may not withhold access
10 to or possession of an original record provided by a person that seeks performance
11 of a notarial act by the notary public.

12 (6) (a) Neither an online notary public nor an online notarization system
13 provider shall sell, offer for sale, use, or transfer for use any personal information
14 collected in the course of performing a notarial act for any purpose other than
15 completing the notarial act or as necessary to effect, administer, enforce, service, or
16 process the transaction for which the information was provided.

17 (b) The prohibition established in par. (a) does not apply when the notary public
18 or the online notarization system provider is any of the following:

- 19 1. Complying with a request from a regulatory agency or supervisory agency
20 or is responding to a lawful subpoena or court order.
- 21 2. Causing a business divestiture, sale, merger, or acquisition of its business
22 interests with another person as permitted under applicable federal or state law

1 whereby the personal information is being transferred to another person in the due
2 course of the divestiture, sale, merger, or acquisition.

3 **SECTION 49.** 140.26 of the statutes is created to read:

4 **140.26 Validity of notarial acts.** Except as otherwise provided in s. 140.04
5 (2), the failure of a notarial officer to perform a duty or meet a requirement specified
6 in this chapter does not invalidate a notarial act performed by the notarial officer.
7 The validity of a notarial act under this chapter does not prevent an aggrieved person
8 from seeking to invalidate the record or transaction that is the subject of the notarial
9 act or from seeking other remedies based on law of this state other than this chapter
10 or law of the United States. This section does not validate a purported notarial act
11 performed by an individual who does not have the authority to perform notarial acts.

12 **SECTION 50.** 140.27 of the statutes is created to read:

13 **140.27 Rules; powers of the department.** (1) (a) Subject to pars. (b) and
14 (c), the department ^{shall} may promulgate rules to implement this chapter. These rules
15 may do any of the following:

- 16 1. Establish standards for online notaries public holding a commission under
17 s. 140.02 (2m).
- 18 2. Establish a minimum period during which online notaries public shall retain
19 evidence of online notarizations.
- 20 3. Require applicants for appointment as an online notary public under s.
21 140.02 (2m) to complete a course of instruction and identify all courses of instruction
22 approved by the department to satisfy this requirement.
- 23 4. Specify the electronic notarial seals described in s. 140.02 (3) (c).
- 24 5. Establish security standards for accessing electronic notarization systems
25 maintained by online notarization system providers under s. 140.03.

1 6. Establish maximum fees that may be charged by an online notary public for
2 performing an online notarization. *a notarial act for a remotely located individual*

3 7. Establish standards for online notarization, credential analysis, identity
4 proofing, and communication technology, or otherwise facilitate online
5 notarizations.

6 8. Prescribe the manner of performing notarial acts regarding tangible and
7 electronic records.

8 9. Include provisions to ensure that any change to or tampering with a record
9 bearing a certificate of a notarial act is self-evident.

10 10. Include provisions to ensure integrity in the creation, transmittal, storage,
11 or authentication of electronic records or signatures.

12 11. Include provisions to prevent fraud or mistake in the performance of
13 notarial acts.

14 12. Establish any other requirement, not inconsistent with this chapter,
15 relating to online notaries public and online notarizations.

16 (b) Rules promulgated under par. (a) regarding the performance of notarial acts
17 with respect to electronic records may not require, or accord greater legal status or
18 effect to, the implementation or application of a specific technology or technical
19 specification.

20 (c) In promulgating rules under par. (a) about notarial acts with respect to
21 electronic records, the department shall consider, so far as is consistent with this
22 chapter, all of the following:

23 1. The most recent standards regarding electronic records promulgated by
24 national bodies, such as the National Association of Secretaries of State.

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1 2. Standards, practices, and customs of other jurisdictions that substantially
2 enact the revised uniform law on notarial acts (2018) or any subsequent version of
3 this act.

4 3. The views of governmental officials, entities, and other interested persons.

5 **(2)** The department has the power, jurisdiction, and authority to do any of the
6 following:

7 (a) Investigate to determine whether a person has violated, is violating, or is
8 about to violate this chapter or a rule promulgated or order issued under this chapter.
9 For the purpose of an investigation under the chapter, the department may
10 administer oaths and affirmations, issue subpoenas, take evidence, require the filing
11 of statements, require testimony, and require the production of any records that the
12 department considers relevant or material to the investigation.

13 (b) Examine the books, records, business practices, and systems of any online
14 notarization system provider registered under s. 140.03. The department may
15 determine the cost of an examination, which shall be paid by every registrant so
16 examined within 30 days after demand by the department.

17 (c) Revoke, suspend, or restrict any commission or registration issued under
18 this chapter if the department determines that the person holding the commission
19 or registration has refused to comply with an investigation demand under par. (a) or
20 has violated, is violating, or is about to violate this chapter or any rule promulgated
21 or order issued under this chapter.

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22 **SECTION 51.** 140.31 of the statutes is created to read:

23 **140.31 Relation to electronic signatures in global and national**
24 **commerce act.** This chapter modifies, limits, and supersedes the Electronic
25 Signatures in Global and National Commerce Act, 15 USC 7001 to 7031, but does not

1 modify, limit, or supersede section 101 (c) of that act, 15 USC 7001 (c), or authorize
2 electronic delivery of any of the notices described in section 103 (b) of that act, 15 USC
3 7003 (b).

4 **SECTION 52.** 236.21 (2) (a) of the statutes is amended to read:

5 236.21 (2) (a) A certificate by the owner of the land in substantially the
6 following form: "As owner I hereby certify that I caused the land described on this
7 plat to be surveyed, divided, mapped and dedicated as represented on the plat. I also
8 certify that this plat is required by s. 236.10 or 236.12 to be submitted to the following
9 for approval or objection: (list of governing bodies required to approve or allowed to
10 object to the plat)." This certificate shall be signed by the owner, the owner's spouse,
11 and all persons holding an interest in the fee of record or by being in possession and,
12 if the land is mortgaged, by the mortgagee of record. These signatures shall be
13 acknowledged in accordance with ~~s. 706.07~~ ch. 140.

14 **SECTION 53.** 236.295 (1) (b) of the statutes is amended to read:

15 236.295 (1) (b) Ratifications of a recorded plat or certified survey map signed
16 and acknowledged in accordance with ~~s. 706.07~~ ch. 140.

17 **SECTION 54.** 244.05 of the statutes is amended to read:

18 **244.05 Execution of power of attorney.** To execute a power of attorney the
19 principal must sign the power of attorney or another individual, in the principal's
20 conscious presence and directed by the principal, must sign the principal's name on
21 the power of attorney. A signature of the principal on a power of attorney is presumed
22 to be genuine if the principal makes an acknowledgment of the power of attorney
23 before a notarial officer authorized under ~~s. 706.07~~ ch. 140 to take acknowledgments.

24 **SECTION 55.** 244.19 (1) of the statutes is amended to read:

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1 244.19 (1) For purposes of this section and s. 244.20, “acknowledged” means
2 the taking of an acknowledgment before a notarial officer authorized to take
3 acknowledgements under ~~s. 706.07~~ ch. 140.

4 **SECTION 56.** 407.103 (4) of the statutes is amended to read:

5 407.103 (4) To the extent there is a conflict between ~~subch. II~~ of ch. 137 and this
6 chapter, this chapter governs.

7 **SECTION 57.** 610.60 (2) (a) of the statutes is amended to read:

8 610.60 (2) (a) Subject to par. (c), subs. (3) and (5) (b), and s. 137.12 (2r) (c), notice
9 to a party, and any other document that is required under applicable law in an
10 insurance transaction or that serves as evidence of insurance coverage, may be
11 stored, presented, and delivered by electronic means, as long as the notice or other
12 document meets the requirements of ~~subch. II~~ of ch. 137.

13 **SECTION 58.** 703.33 (9) of the statutes is amended to read:

14 703.33 (9) **ELECTRONIC DELIVERY.** The information required under subs. (1) and
15 (2) may be delivered electronically in accordance with 15 USC 7001 (c), ~~subch. II~~ of
16 ch. 137, and any other requirements that are prescribed by law.

17 **SECTION 59.** 706.05 (2) (b) of the statutes is amended to read:

18 706.05 (2) (b) Contain a form of authentication authorized by s. 706.06 or
19 ~~706.07~~ ch. 140;

20 **SECTION 60.** 706.05 (8) of the statutes is amended to read:

21 706.05 (8) A duly recorded certificate signed by or on behalf of the holder of
22 record of any mortgage or other security interest in lands, and authenticated as
23 provided by s. 706.06 or ~~706.07~~ ch. 140 identifying the mortgage or other interest and
24 stating that the same has been paid or satisfied in whole or in part, shall be sufficient
25 to satisfy such mortgage or other interest of record.

1 **SECTION 61.** 706.06 (1) of the statutes is amended to read:

2 706.06 (1) Any instrument may be acknowledged, or its execution otherwise
3 authenticated by its signators, as provided by the laws of this state; or as provided
4 in this section or ~~s. 706.07~~ ch. 140.

5 **SECTION 62.** 706.07 of the statutes is repealed.

6 **SECTION 63.** 706.085 (2) (a) of the statutes is amended to read:

7 706.085 (2) (a) A correction instrument shall be acknowledged or
8 authenticated in accordance with s. 706.06 or ~~706.07~~ ch. 140. It shall recite the
9 document number of the conveyance, the names of the grantor and grantee, and, if
10 given on the conveyance, the volume and page where the conveyance is filed or
11 recorded.

12 **SECTION 64.** 708.15 (10) (g) of the statutes is amended to read:

13 708.15 (10) (g) Be signed by the satisfaction agent, as provided in sub. (9) (am),
14 and contain a form of authentication authorized by s. 706.06 or ~~706.07~~ ch. 140.

15 **SECTION 65.** 801.18 (11) (a) of the statutes is amended to read:

16 801.18 (11) (a) Notaries public who hold valid appointments under ch. ~~137~~ 140
17 may issue certificates of notarial acts for electronically filed documents as provided
18 in this section.

19 **SECTION 66.** 801.18 (11) (e) of the statutes is amended to read:

20 801.18 (11) (e) Notwithstanding ~~s. 706.07 (8) (e)~~, an An electronically filed
21 complaint under ch. 799 may be verified by applying the electronic signature of the
22 plaintiff or the plaintiff's attorney to a written oath attesting that the facts of the
23 complaint are true, without swearing to the oath in front of a notarial officer.

****NOTE: In s. 801.18 (11) (e), the cross-reference to s. 706.07 (8) (c) appears to be incorrect. Because the provision intended to be "notwithstanding" is not obvious, I have simply eliminated the clause.

1 **SECTION 67.** 857.015 of the statutes is amended to read:

2 **857.015 Management and control of certain business property by**
3 **holding spouse.** A spouse who holds property described under s. 766.70 (3) (a), (b)
4 or (d) which is not also held by the other spouse may direct in a will or other signed
5 writing that the marital property interest of the nonholding spouse in such property
6 be satisfied as provided under s. 861.015. The holding spouse shall identify in a will
7 or other signed writing the property described under s. 766.70 (3) (a), (b) or (d) to
8 which the directive applies. The signature of the holding spouse on a directive other
9 than a will shall be acknowledged, attested or witnessed under ~~s. 706.07~~ ch. 140. The
10 estate of the holding spouse may not execute a directive under this section. If at the
11 death of a spouse the surviving spouse is the holding spouse, the surviving spouse
12 may execute a directive under this section if executed within 90 days after the
13 decedent spouse's death.

14 **SECTION 68.** 867.045 (2) of the statutes is amended to read:

15 867.045 (2) The register of deeds or other person authorized under s. 706.06
16 or ~~706.07~~ ch. 140 shall complete a statement at the foot of the application, declaring
17 that the applicant appeared before him or her and verified, under oath, the
18 correctness of the information required by sub. (1).

19 **SECTION 69.** 867.046 (3) of the statutes is amended to read:

20 867.046 (3) **COMPLETION OF APPLICATION.** The register of deeds or other person
21 authorized under s. 706.06 or ~~706.07~~ ch. 140 shall complete a statement at the foot
22 of the application, declaring that the applicant or, if the applicant is not an
23 individual, a representative of the applicant appeared before him or her and verified,
24 under oath, the correctness of the information required by sub. (2).

25 **SECTION 70.** 887.01 (1) of the statutes is amended to read:

1 887.01 (1) WITHIN THE STATE. An oath or affidavit required or authorized by law,
2 except oaths to jurors and witnesses on a trial and such other oaths as are required
3 by law to be taken before particular officers, may be taken before any judge, court
4 commissioner, resident U.S. commissioner who has complied with s. ~~706.07~~ ch. 140,
5 clerk, deputy clerk or calendar clerk of a court of record, court reporter, notary public,
6 town clerk, village clerk, city clerk, municipal judge, county clerk or the clerk's
7 deputy within the territory in which the officer is authorized to act, school district
8 clerk with respect to any oath required by the elections laws; and, when certified by
9 the officer to have been taken before him or her, may be read and used in any court
10 and before any officer, board or commission. Oaths may be administered by any
11 person mentioned in s. 885.01 (3) and (4) to any witness examined before him or her.

12 **SECTION 71.** 887.01 (3) of the statutes is amended to read:

13 887.01 (3) OFFICER IN ARMED FORCES. In every instance where an officer in the
14 armed forces is authorized by s. ~~706.07 (5)~~ 140.13 to take an acknowledgment, the
15 officer may administer an oath.

16 **SECTION 72.** 887.015 (4) (b) 4. of the statutes is amended to read:

17 887.015 (4) (b) 4. A declaration to be recorded pursuant to s. ~~706.06, 706.07~~, or
18 ~~706.25~~ or ch. 140.

19 **SECTION 73.** 968.12 (2) of the statutes is amended to read:

20 968.12 (2) WARRANT UPON AFFIDAVIT. A search warrant may be based upon
21 sworn complaint or affidavit, or testimony recorded by a phonographic reporter or
22 under sub. (3) (d), showing probable cause therefor. The complaint, affidavit or
23 testimony may be upon information and belief. The person requesting the warrant
24 may swear to the complaint or affidavit before a notarial officer authorized under s.
25 ~~706.07~~ ch. 140 to take acknowledgments or before a judge, or a judge may place a

1 person under oath via telephone, radio, or other means of electronic communication,
2 without the requirement of face-to-face contact, to swear to the complaint or
3 affidavit. The judge shall indicate on the search warrant that the person so swore
4 to the complaint or affidavit.

5 SECTION 74. 990.01 (38) of the statutes is amended to read:

6 990.01 (38) SIGNATURE. If the signature of any person is required by law it shall
7 always be the handwriting of such person or, if the person is unable to write, the
8 person's mark or the person's name written by some other person at the person's
9 request and in the person's presence, or, subject to any applicable requirements
10 under ~~subch. II~~ of ch. 137, the electronic signature of the person.

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11 SECTION 75. Initial applicability.

12 (1) This act first applies to notarial acts performed on the effective date of this
13 subsection.

14 SECTION 76. Effective date.

15 (1) This act takes effect on the first day of the ^{2nd} 4th month beginning after
16 publication.

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17 (END)

D-Note