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# Wisconsin Legislative Council

## AMENDMENT MEMO

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**2019 Senate Bill 317**

**Senate Substitute Amendment 1**

### 2019 SENATE BILL 317

2019 Senate Bill 317 provides that a person holding a commission as a notary public from the Department of Financial Institutions (DFI) and meets certain eligibility requirements may obtain an additional commission as an online notary public.

The bill also provides that an online notary public who is physically located in this state may perform an online notarial act for a person who is physically located in the United States or for a person who is physically located outside the United States if certain conditions are satisfied. Specifically, the bill creates a process for an online notarial act which is a notarial act that is performed by means of communication technology that meets standards established by DFI by providing all of the following:

- An online notary public must verify the identity of the person for whom the notarial act is performed (principal) using certain prescribed procedures.
- A person for whom an online notarial act is performed is considered to appear personally before the online notary public at the time of the online notarial act.
- An online notary public must use an electronic notarial seal for an online notarial act and must prepare an electronic certificate of notarial act that satisfies certain requirements.
- An online notary public must keep specified electronic records for online notarized documents and must maintain the security of these records.
- The online notary public must also create an audio and video copy of the performance of the online notarial act.
- The online notary public must take reasonable steps to ensure the integrity and security of online notarizations, maintain a backup for all electronic records, and protect the backup records from unauthorized use. However, the online notary public may designate a repository to maintain the electronic records and the audio and video recordings, and if such a designation is made the repository is subject to these requirements.

The bill also requires any person that offers the services of an electronic notarization system (online notarization system provider) to register with DFI. An online notarization system provider may authorize only DFI-commissioned online notaries public to use its electronic notarization system and must notify DFI of each online notary public authorized to use its system. The system must incorporate security measures. Any notary public may also use an electronic signature and electronic seal for notarial acts performed in the physical presence of the principal.

Lastly, the bill requires DFI to promulgate rules to implement the provisions of the bill relating to online notaries public and online notarial acts, and to facilitate online notarizations. The rules must include standards for online notarization, credential analysis, identity proofing, and communication technology.

## SENATE SUBSTITUTE AMENDMENT 1

Senate Substitute Amendment 1 (SSA 1) replaces the provisions of the bill described above with provisions that do as follows:

- Consolidates state law related to notaries public and notarial acts and places them in a newly created statutory chapter, ch. 140, Stats. Under current law, statutes governing notaries public and notarial acts are found in subch. I, ch. 137, Stats., and s. 706.07, Stats.
- Adopts the Uniform Law Commission's Revised Uniform Law on Notarial Acts from 2018 (RULONA 2018). RULONA 2018 contains provisions to allow for remote notarization of documents where a person does not appear in person before a notary public. In adopting RULONA 2018, SSA 1 includes the following provisions related to remote notarization:
  - Authorizes a notary public located in the state to perform a notarial act using communication technology<sup>1</sup> for a remotely located individual if:
    - The notary public has personal knowledge of the identity of the individual, satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notary public, or obtained satisfactory evidence of the identity of the remotely located individual by using at least two different types of identity proofing.
    - The notary public is able to reasonably confirm that a record before the notary public is the same record in which the remotely located individual made a statement or on which the individual executed a signature.
    - The notary public, or a person acting on behalf of the notary public, creates an audio-visual recording of the performance of the notarial act.
    - If the remotely located individual is located outside of the United States, the record is either: (1) to be filed with or relates to matters before a public official or court, governmental entity, or other entity subject to the jurisdiction of the United States; or (2) involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States. Also, the notary public may not remotely notarize a record if it is prohibited by the foreign state in which the remotely located individual is located.
  - Requires a notary public or any provider of communication technology to keep confidential any document or information that is provided to the notary public or provider of communication technology or contained in any document reviewed by the notary public or provider of communication technology while performing his, her, or its duties. Under SSA 1, a notary public or provider of communication technology may release the documents or information to a third person only with the **written consent of the person who requested the services of the notary public or the provider of communication technology**. This confidentiality provision does not apply when complying with a request from a regulatory agency or supervision agency, or when responding to a lawful subpoena or court order.
  - Requires a notary public to notify DFI that the notary public will be performing notarial acts for remotely located individuals and to identify the technologies that the notary public intends to

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<sup>1</sup>The bill defines "communication technology" to mean an electronic device or process that satisfies all of the following: (1) the device or process allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and (2) when necessary and consistent with other applicable law, the device or process facilitates communication with a remotely located individual who has a vision, hearing, or speech impairment.

use. If DFI has established standards for the communication technology or identity proofing, the communication technology and identity proofing must conform to these standards.

- Provides that the authority to remotely notarize a document does not apply to a transaction that is governed by a law related to any of the following:
  - Wills, codicils, or testamentary trusts.
  - Living trusts or trust amendments for personal use.
  - Powers of attorney.
  - Marital property agreements.
  - Powers of attorney for health care, declarations to physicians (living wills), and authorizations for use and disclosure of protected health care information.
- Creates a remote notary council that is attached to DFI and is required to adopt standards to implement the provisions of the bill related to remote notarization. SSA 1 specifies what the council must consider when it adopts, amends, or repeals a standard. SSA 1 also requires DFI to promulgate by rule the standards that are adopted, amended, or repealed by the council. Membership of the remote notary council is comprised of the DFI secretary or the secretary's designee and one member representing each of the following for three-year terms:
  - An association of title insurance companies.
  - Attorneys who practice real estate law.
  - An association of bankers.
  - Providers of communication technology used to perform a notarial act involving a remotely located individual.
- Requires DFI to do all of the following:
  - Maintain an electronic database of notaries public for which a person may verify the authority of a notary public to perform notarial acts and indicates whether a notary public has informed DFI that the notary public will be performing notarial acts for remotely located individuals.
  - Promulgate rules that do all of the following:
    - Establish maximum fees that may be charged by a notary public for performing a notarial act for a remotely located individual.
    - Prescribe the manner of performing notarial acts regarding tangible and electronic records.
    - Include provisions to ensure that any change to or tampering with a record bearing a certificate of a notarial act is self-evident.
    - Include provisions to ensure integrity in the creation, transmittal, storage, or authentication of electronic records or signatures.
    - Prescribe the process of granting, renewing, conditioning, denying, suspending, or revoking a notary public commission and assuring the trustworthiness of an individual holding a commission as a notary public.
    - Include provisions to prevent fraud or mistake in the performance of notarial acts.
  - In promulgating the rules described above, consider all of the following: (1) the most recent standards regarding electronic records promulgated by national bodies, such as the National Association of Secretaries of State; (2) the standards, practices, and customs of other jurisdictions that substantially enact the RULONA 2018 or any subsequent version of it; and (3) the views of governmental officials, entities, and other interested persons.

- Authorizes DFI to promulgate the rules listed above as emergency rules without making the findings generally required for emergency rulemaking. SSA 1 also provides that DFI is not required to prepare a scope statement of the emergency rules or present the emergency rules to the governor for approval.
- Authorizes DFI to investigate violations of state law related to notarial acts and revoke, suspend, or restrict any notarial commission or registration if the person holding the commission or registration has refused to comply with an investigation demand for production of any record that DFI considers relevant or material to the investigation. SSA 1 also authorizes DFI to revoke, suspend, or restrict any notarial commission or registration if the person holding the commission or registration has violated, is violating, or is able to violate state law related to notarial acts.
- Specifies that before a notary public or provider of communication technology may release otherwise confidential documents or information to a third person, the written consent to do so must be separate and independent from any other consent, permission, disclosure, or acknowledgement, in a manner consistent with applicable law.
- Provides that a notary public may not remotely notarize the oath of a witness at a deposition.

## **BILL HISTORY**

SSA 1 was introduced by Senator Olsen on October 28, 2019. On January 29, 2020, the Senate Committee on Agriculture, Revenue, and Financial Institutions voted to recommend adoption of SSA 1, and the bill, as amended, both by votes of Ayes, 9; Noes, 0.

DWS:ksm