
Wisconsin Legislative Council

ACT MEMO



Prepared by: Melissa Schmidt, Senior Staff Attorney

April 6, 2020

2019 Wisconsin Act 125 [2019 Assembly Bill 293]

Notaries Public and Remote Notarization

2019 Wisconsin Act 125 makes various changes to the law related to notaries public and remote notarization. Specifically, the act consolidates statutes related to notaries public and notarial acts into one chapter; adopts provisions found in the Uniform Law Commission's Revised Uniform Law on Notarial Acts from 2018 (RULONA 2018), which authorizes the remote notarization of documents; authorizes the Department of Financial Institution (DFI) to have specified rulemaking and enforcement authority over notaries public and notarial acts; and creates a remote notary council to adopt and implement standards related to remote notarizations.

CONSOLIDATION OF STATUTES RELATED TO NOTARIZATIONS

Under **prior law**, statutes governing notaries public and notarial acts were located in two different places, in subch. I, ch. 137, Stats., and s. 706.07, Stats. **The act** consolidates these statutes and places them in a newly created statutory chapter, ch. 140, Stats.

RULONA 2018

The act adopts provisions found in RULONA 2018, which contains provisions that allow for the remote notarization of documents where a person does not appear in person before a notary public. Specifically, the act does all of the following related to remote notarization:

- In general, authorizes a notary public located in the state to perform a notarial act using communication technology¹ 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

¹ The act 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.

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 the act, a notary public or provider of communication technology may release the documents or information to a third person only with the written consent, independent from any other consent, permission, disclosure, or acknowledgement, in a manner consistent with applicable law, 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 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 remote notarization provisions created by the act do not apply to certain documents. Specifically, the following documents may not use the remote notarization provisions created by the act:
 - The administration of an oath before a witness at a deposition.
 - 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.

REGULATORY OVERSIGHT OF NOTARIES PUBLIC

DFI

Under the act, DFI has regulatory oversight over notaries public. Specifically, the act requires DFI to maintain an electronic database of notaries public which a person may use to verify that a notary public has the authority to perform notarial acts. The database must also indicate whether a notary public has informed DFI that the notary public will be performing notarial acts for remotely located individuals. In addition to promulgating the standards that are adopted, amended, or repealed by the remote notary council that are described in the following section, the act requires DFI to 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.

Under the act, DFI must consider all of the following when promulgating the rules described above:

- The most recent standards regarding electronic records promulgated by national bodies, such as the National Association of Secretaries of State.
- The standards, practices, and customs of other jurisdictions that substantially enact RULONA 2018 or any subsequent version of it.
- The views of governmental officials, entities, and other interested persons.

The act authorizes DFI to promulgate the rules listed above as emergency rules without making the findings generally required for emergency rulemaking. The act 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.

Related to investigatory and enforcement authority, the act authorizes DFI to investigate violations of state law related to notarial acts. The act empowers DFI to 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. The act 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 about to violate state law related to notarial acts.

Remote Notary Council

The act creates a remote notary council that is attached to DFI and is required to adopt standards to implement the provisions of the act related to remote notarization. The act specifies what the council must consider when it adopts, amends, or repeals a standard. Under the act, the standards that are adopted, amended, or repealed by the council must be promulgated by DFI by rule. 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.

Effective date: May 1, 2020. The act also first applies to notarial acts performed on May 1, 2020.

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