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CO-CHAIR, JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

41<sup>st</sup> ASSEMBLY DISTRICT

**Assembly Bill 293: Online Notaries Public and Electronic Notarizations  
Testimony of Representative Joan Ballweg  
Assembly Committee on Local Government  
October 16, 2019**

Thank you, Chair Novak and members of the Committee on Local Government, for holding this public hearing on Assembly Bill 293.

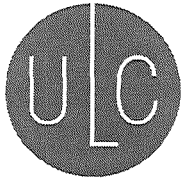
This legislation will allow signatures to be notarized remotely online, removing time and location barriers to receiving authentication, joining 22 other states in modernizing laws regarding notaries public and notarization.

In order to perform remote online notary services, a person will need to obtain permission from the Department of Financial Institutions (DFI). DFI must approve the process in which the signor and the notary are able to communicate during the process and the specific procedures for verification of the person's identity. Persons providing the online notarization identity verification systems must register with DFI and have their system approved. Online notaries public must agree to retain records themselves or with a repository for at least seven years.

Assembly Bill 293 was crafted with the input of many stakeholder groups, including the Wisconsin Land Title Association, Wisconsin Realtors Association, Wisconsin Bankers Association, Wisconsin Credit Union League, Wisconsin Register of Deeds Association, Wisconsin Mortgage Bankers Association, Wisconsin State Bar, Department of Financial Institutions and others.

There will be a substitute amendment introduced to address feedback received from DFI and the State Bar. Representatives from these organizations are here today, and I appreciate everyone's work on this legislation.

Thank you for your time, I'm happy to answer any questions.



## **REVISED UNIFORM LAW ON NOTARIAL ACTS (2018)**

The Revised Uniform Law on Notarial Acts (RULONA) was promulgated by the Uniform Law Commission (ULC) in 2010. Among its features, it included provisions to provide a stable infrastructure for the performance of notarial acts with respect to electronic records and signatures.

Amendments to Revised Uniform Law on Notarial Acts, including a new Section 14A on remote notarization, were approved by the ULC in 2018, resulting in RULONA (2018). If a state has already adopted RULONA, it will update to the current version by enacting new subsection 4(c), new Section 14A, and new subsection 20(c). If a state has not previously enacted RULONA, it should enact RULONA (2018).

RULONA (2018) was prepared in response to a rapidly emerging trend among the states to authorize the performance of notarial acts by means of audio-visual technology. Traditionally, an individual has been required to physically appear before a notary public. In recent years, technology and commercially available identification services have made it possible to perform notarial acts for persons who are not in the physical presence of a notary public. RULONA (2018) authorizes remote notarization without geographic limits on the location of the signer.

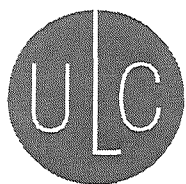
RULONA (2018) updates RULONA (2010) by authorizing a notary public to perform notarial acts for remotely located individuals using communication and identity-proofing technology provided its requirements have been fulfilled. The new provisions:

- Provide that an individual may appear before a notary public by means of communication technology and thereby comply with the provisions of RULONA Section 6 calling for appearance before a notary public (Section 14A (b)).
- Define communication technology as any means or process that allows a notary public and a remotely located individual to communicate with each other simultaneously (Section 14A (1)(A)). Specific technology is not identified in the amendment.
- Specify the means by which a notary public must identify a remotely located individual (Section 14A (c)(1)). This includes personal knowledge of the identity of the individual, and evidence of the identity of the remotely located individual by oath or affirmation from a credible witness.
- Permit a notary public to identify a remotely located individual by at least two different types of identity-proofing processes or services (Section 14A (c)(1)(C)). This may include having a remote individual answer questions for which there is a high probability that only the true individual would be able to answer correctly, or using biometric identification technology or credential analysis.

- Require that an audio-visual recording of the performance of the notarial act be created (Section 14A (c)(3)).
- Provide that the certificate of notarial act required under Section 15 must indicate that a notarial act performed in accordance with this Section was done by means of communication technology (Section 14A (d)).
- Provide that the commissioning officer may adopt rules regarding the performance of notarial acts for remotely located individuals (Section 14A (h)).

RULONA (2018) also now specifies that the notarial officer may certify that a tangible copy is an accurate copy of an electronic record and that such certifications may be accepted for recording into the real estate records.

For further information about the RULONA, please contact Katie Robinson, ULC Legislative Program Director at [krobinson@uniformlaws.org](mailto:krobinson@uniformlaws.org) or Kaitlin Wolff, ULC Legislative Counsel, at [kwolff@uniformlaws.org](mailto:kwolff@uniformlaws.org).



## **WHY YOUR STATE SHOULD ADOPT THE REVISED UNIFORM LAW ON NOTARIAL ACTS (2018)**

The Revised Uniform Law on Notarial Acts (RULONA 2018) updates and modernizes the 1982 Uniform Law on Notarial Acts. First revised in 2010 to update the provisions on notary responsibilities, electronic recording, interstate recognition, and remedies, it was further modified in 2018 to provide that a person seeking a notarization may appear before the notarial officer in person or using communications technology and to include provisions to assure the integrity and reliability of all notarized documents. RULONA (2018) is designed to modernize and clarify the law governing notaries public, their responsibilities and duties, and to provide a stable infrastructure for the performance of notarial acts with respect to electronic records.

- RULONA (2018) harmonizes treatment of notarization of all records, whether on paper or electronic. It works together with the Uniform Electronic Transactions Act (1999) and the federal Electronic Signatures in Global and National Commerce Act (2000), as well as the Uniform Real Property Electronic Recording Act (2005).
- RULONA (2018) prevents incidents of conflict of interest for notaries. The act prohibits notarial officers from acting in any transaction in which the officer or his or her spouse, is a party or has a direct beneficial interest.
- RULONA (2018) preserves the integrity and reliability of notarized documents. It requires any person seeking a notarization to appear in person before the notarial officer, who must verify the identity of the person and witness the signature or receive an acknowledgment or verification of the signature. The person may appear in the physical presence of the notarial officer or via communications technology. In the latter case, in addition to identification by the personal knowledge of the notary or verification by a witness, the notary may use two different technologies or processes to identify the person. In addition, the notary must be able to confirm that the record is the same one signed by the person and make an audio-visual recording of the notarial act.
- RULONA (2018) works with notarial acts conducted in other jurisdictions by providing for recognition of valid notarizations from other states, from federally recognized American Indian tribes or nations, or under federal law or the law of foreign nations.
- RULONA (2018) prevents false and deceptive advertising by prohibiting notarial officers from using the title “notario publico” and requires notaries who do advertise to state they cannot practice law or act as immigration counselors.
- RULONA (2018) provides minimum standards for receiving a commission, including optional provisions for surety bonds and the examination of applicants. The act also includes optional provisions for the maintenance of journals of notarial acts.
- RULONA (2018) includes provisions authorizing notaries to certify that a tangible copy of an electronic record is an accurate copy, and such a certified copy may be accepted for recording in the real estate records.

For further information about RULONA, please contact:

- Katie Robinson, ULC Legislative Program Director, [krobinson@uniformlaws.org](mailto:krobinson@uniformlaws.org)
- Kaitlin Wolff, ULC Legislative Counsel, [kwolff@uniformlaws.org](mailto:kwolff@uniformlaws.org)



## STATE REPRESENTATIVE KALAN HAYWOOD

To the Honorable Chairman Representative Novak and the distinguished members of the Assembly Committee on Local Government:

I would like to begin by first thanking you for taking AB 293 up today for a public hearing.

With the world around us constantly changing, as well as our advancements in technology, there is an inherent need for this legislature to produce legislation that stays up with the times. Implementing a mechanism such as remote notarization is an example of keeping the course with modern times. This bill helps many industries, such as the bankers, registered deeds, title companies, realtors and many more. Notarization is critical to the long term success of many across the world and especially our state. Online notarization helps those in urban communities but also those in rural; by making notaries more accessible. This can take one less hurdle out of business transactions in Wisconsin and ultimately make the state more attractive to folks that want to grow and invest in the state we have the luxury of calling home

Twenty-Two states currently have passed laws that allow for the use of remote online notarization. Those twenty two are Arizona, Florida, Idaho, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Tennessee, Texas, South Dakota, Utah, Vermont, Virginia, and Washington. More than half of those states have already implemented remote online notarization and the other ten are expected to reach full implementation no later than this time next year.

Wisconsin is not the first to make this legislative move but we certainly shouldn't be the last. This is a bill that has bi-partisan support, no one registered in opposition prior to today and is essentially a technical change that conduct business in the great State of Wisconsin. It is for those reasons that I encourage you all to pass this bill in a bi-partisan manner and let Wisconsin business owners know that we support them.

Yours in service,

Representative Kalan Haywood

Wisconsin's Sensational 16th District

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**Luther S. Olsen**  
State Senator  
14th District

**TO:** Assembly Committee on Local Government  
**FROM:** Senator Luther Olsen  
**DATE:** October 16, 2019  
**SUBJECT:** Testimony in favor of Assembly Bill 293.

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Thank you Chairman Novak and the Assembly Committee on Local Government for holding a hearing and allowing me to testify in favor of Assembly Bill 293.

This legislation modernizes current statutes relating to notary publics and notarization by allowing signatures to be notarized remotely online. This will save time and remove location barriers to receiving authentication.

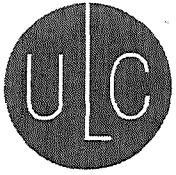
In order to perform online notary services remotely, a person will need to obtain an additional commission as an online notary public from the Department of Financial Institutions (DFI). The term of the commission will be four years. This will allow an online notary public who is physically located in Wisconsin to perform an online notary for a person who is physically located in the United States or for a person who is located outside the United States if certain conditions are satisfied.

DFI must approve the process in which the signer and the notary are able to communicate during the process and the specific procedures for verification of the person's identity. Persons providing the online notarization identity verification systems must register with DFI and have their system approved. Online notary publics must agree to retain records themselves or with a repository for at least seven years.

Assembly Bill 293 was crafted with the input of many stakeholder groups, including the Wisconsin Land Title Association, Wisconsin Realtors Association, Wisconsin Bankers Association, Wisconsin Credit Union League, Wisconsin Register of Deeds Association, Wisconsin Mortgage Bankers Association, Wisconsin State Bar, Department of Financial Institutions and others.

In addition, there will be a substitute amendment introduced to address feedback received from DFI and the State Bar.

Thank you, members. I ask for your support and would be more than happy to answer any questions.



Written Statement of  
Kaitlin Wolff, Legislative Counsel  
Uniform Law Commission  
In Support of  
AB 293 (As Amended)  
October 14, 2019

Chair Novak and Members of the Local Government Committee:

My name is Kaitlin Wolff and I serve as Legislative Counsel for the Uniform Law Commission. The Uniform Law Commission, or ULC, is a nonprofit organization based in Chicago that is made up of volunteer attorneys appointed by their states. The ULC's mission is to draft model legislation for states in areas in which uniformity is practical and desirable. **I am writing to offer the ULC's support of Assembly Bill 293, as amended.**

The substitute amendment to AB 293 modernizes Wisconsin law regarding notaries public by adopting the Revised Uniform Law on Notarial Acts (RULONA). RULONA is the newest version of the Uniform Law on Notarial Acts, which Wisconsin adopted in 1984. Nine states have enacted RULONA in the past year and several more plan to introduce RULONA in 2020.

RULONA clarifies the law regarding notaries public, their responsibilities and duties, and provides a framework for performing notarial acts with respect to electronic records. RULONA also permits remote notarization, a concept that is growing in popularity across the states. Below I explain just a few of RULONA's benefits.

First, RULONA harmonizes the treatment of notarization of all records, whether those records are paper or electronic. RULONA also works seamlessly with two other uniform acts Wisconsin has on the books, the Uniform Electronic Transactions Act and the Uniform Real Property Electronic Recording Act.

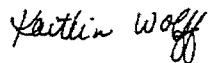
RULONA also preserves the integrity and reliability of notarized documents. It requires any person seeking a notarization to appear in person before the notarial officer, who must verify the identity of the person and witness the signature or receive an acknowledgment or verification of the signature. The person may appear in the physical presence of the notarial officer or via communications technology. In the latter case, in addition to identification by the personal knowledge of the notary or verification by a witness, the notary may use two different technologies or processes to identify the person. In addition, the notary must be able to confirm that the record is the same one signed by the person and make an audio-visual recording of the notarial act.

In addition to these advancements, the substitute amendment to AB 293 eliminates two issues presented in the introduced bill. First, the substitute amendment creates a standalone statutory chapter for RULONA. Right now, the notarial act statute is housed in Chapter 706 of the Wisconsin Statutes as Section 706.07, even though it applies to *all* notarial acts and the rest of Chapter 706 governs only conveyances of real property. The amendment to AB 293 eliminates confusion and ensures the statute is more accessible to persons interested in notarizing a

contract or other document. Second, the substitute amendment to AB 293 avoids any risk of federal preemption of Wisconsin law by the federal Electronic Signatures in Global and National Commerce Law. This risk existed because the introduced bill amended the Uniform Electronic Transactions Act, which Wisconsin enacted in 1999 and is codified as Subchapter II of Chapter 137 of the Wisconsin Statutes. The substitute amendment leaves the Uniform Electronic Transactions Act untouched, eliminating the risk for federal preemption.

RULONA is a carefully crafted and complete update to Wisconsin's law governing notaries public and notarial acts. Adopting RULONA through the substitute amendment to AB 293 provides clarity to Wisconsin's law and ensures that the state keeps pace with technological advances.

Respectfully,

A handwritten signature in cursive script that reads "Kaitlin Wolff". The signature is written in black ink and is positioned above the typed name.

Kaitlin Wolff



## REAL PROPERTY, PROBATE & TRUST LAW SECTION

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To: Assembly Committee on Local Government  
Date: October 16, 2019  
Re: Support of AB 293 – Substitute Amendment on Revised Uniform Law on Notarial Acts (RULONA)

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The Real Property Probate Trust (RPPT) Section Board of the State Bar of Wisconsin supports the substitute amendment to AB 293 (RULONA). The section would also like to thank Rep. Ballweg and Sen. Olson for their work on this important legislation.

The RPPT Board established a study committee to review AB 293 and, in conjunction with stakeholders, worked with the authors to draft changes to AB 293 to better conform a recently passed uniform law on notarial acts to Wisconsin statutes. The substitute amendment would accomplish and correct the following issues:

- 1.) The substitute amendment creates a new standalone statutory chapter for Notarial Acts. This new standalone chapter will allow citizens, notary publics, attorneys and regulatory agencies to better locate and understand the law. The proposed amendment would combine and clean up current notarial law in other chapters, making it more understandable and readable in statute.
- 2.) The substitute amendment fixes an issue in the original AB 293 draft that dealt with the Uniform Electronic Transfer Act (UETA) and possible noncompliance with federal law. The substitute would fix this issue and the new act will work with existing uniform acts that have already been adopted by Wisconsin (UETA and the Uniform Real Property Electronic Recording Act).
- 3.) Adopting RULONA allows the state to better adapt and conform to technological advances and changes in electronic transactions. The substitute amendment allows for the use of remote online notarization and carefully set out standards and the process for those notarial acts that occur through electronic means.
- 4.) The substitute models a process used when the Uniform Real Property Electronic Recording Act was adopted. To assist the Department of Financial Institutions with the technical standards in RULONA and develop rules and procedures, a Remote Notary Council would be created to assist in the process of carrying out the new act.

If you have any additional questions please contact Cale Battles, Government Relations Coordinator, at (608) 250-6077 or [cbattles@wisbar.org](mailto:cbattles@wisbar.org).

**The RPPT Section requests your support of the substitute amendment to AB 293.**

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*The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.*

*The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.*



STATE BAR OF WISCONSIN



To: Assembly Committee on Local Government

From: Wisconsin Court Reporters Association

Date: October 16, 2019

Re: WCRA Comments on AB 293

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Good morning, Chairman Novak and Committee Members:

My name is Wes Webendorfer. I am an attorney from the DeWitt law firm and I am here today on behalf of the Wisconsin Court Reporters Association (“WCRA”) to testify for informational purposes on AB 293.

WCRA has approximately 300 members, comprised of court reporters working as state employees in the court system, in the private sector, as freelance reporters, and as broadcast captioners. WCRA’s mission is to assist its members, and the general court reporting community, meet the highest professional standards in capturing the spoken word. To do that, WCRA promotes educational and social opportunities, training, and technological advancement for the court reporting community in Wisconsin.

As a general matter, the provisions of AB 293 do not directly impact court reporting. However, WCRA believes that certain language in the bill, which permits an online notary public to remotely swear in a witness using technology, may unintentionally and negatively impact the taking of the verbatim record at depositions in Wisconsin. WCRA believes that this unintended consequence of the bill could be remedied with a simple amendment that would not impact other provisions of the proposal.

WCRA is concerned that if AB 293 is passed in its current form, the ability of stenographic reporters to capture the verbatim record at depositions may be compromised. Because depositions are a crucial piece of the legal process, and sometimes deposition testimony is used to substitute for live testimony at trial, it is imperative that an accurate, verbatim record is created at those proceedings.

Court reporters provide a vital function to the administration of justice in Wisconsin. They are the guardians of the record. The verbatim transcript of the testimony of a witness is crucial in determining the outcome of a case—this is true both at the circuit court level and at the appellate level. Appellate review of any alleged error in a proceeding is limited to the record as it exists. *See Austin v. Ford Motor Co.*, 86 Wis. 2d 628, 641, 273 N.W.2d 233 (1970) (“It is boilerplate law that, when an appeal is brought on a partial transcript, the scope of the review is necessarily confined

to the record before the court. . . .”). If a transcript is incomplete, contains inaccuracies, or does not exist, that can negatively impact the outcome of a case.

There is no better method to accurately capture the verbatim record than a trained and educated stenographic court reporter. Court reporters must pass a rigorous, two-year course of study from an NCRA-approved school. Many court reporters also achieve certification status.

The advantages of having a live stenographic reporter to swear in the witness at a deposition and take the verbatim record are numerous, and include the following:

- Court reporters bring their interpersonal interactions, professional training, and knowledge of legal process to the proceedings they record. Stenographic reporters can use their interpersonal skills and experience to stop proceedings when several people are speaking at once and can also interrupt a witness or attorney when that person is speaking too quietly or too quickly.
- Court reporters in Wisconsin are trained in professional ethics, including preserving the confidentiality of information at a deposition—which often contains sensitive medical data, business trade secrets, or other highly confidential information.
- Court reporters with real-time equipped technology can provide simultaneous rough drafts of the deposition proceeding to attorneys and participants, further increasing the accuracy of the proceeding.
- Live stenographic reporters in the physical presence of a witness can identify problems with the proceedings as they occur and ask participants to immediately correct them.

Under current law, a court reporter, notary public, and certain other officials have the power to administer an oath, *e.g.*, the ability to swear in a witness. Current law also requires that the qualified official with the power to administer an oath may only do so only in the physical presence of that witness. For example, in a deposition, the typical procedure is for a court reporter, who is also a notary public,<sup>1</sup> to swear in the witness **in person** prior to taking the witness’s testimony. Remotely administering an oath to a witness at a deposition is not permitted under existing law.

As WCRA understands the language of AB 293, the bill would make it lawful for a Wisconsin notary public who meets certain requirements to swear in a witness remotely for a deposition. As a result, a notary public who is not a qualified court reporter could use technology to record the testimony of a witness after administering the oath remotely. The remote notary public may have little, if any, familiarity with legal proceedings and would not be qualified to make a verbatim record. Thus, this bill creates a new procedure that could negatively impact the accuracy of the record and the administration of justice in Wisconsin.

WCRA believes that a simple amendment to this bill could solve this unintended consequence. **We request the bill maintain current law so that, in the context of a deposition, the notary public must administer an oath in the physical presence of the witness.**

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<sup>1</sup> All court reporters are also notaries public.

WCRA's intent in bringing this issue to the Committee's attention is not to impact any other portion of this bill, but simply to address swearing in witnesses at depositions. We believe that the administration of justice is best served if witnesses at depositions are required to be sworn in in the physical presence of a notary public or other qualified official.

Thank you for your consideration of these comments. WCRA looks forward to continuing to work with the bill authors and committee on this legislation.

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