

Revised Uniform Law on Notarial Acts; SB 106

SB 106 enacts the Revised Uniform Law on Notarial Acts (RULONA) and repeals the Uniform Law on Notarial Acts (ULONA), as well as other current laws regarding notaries. Throughout RULONA, some provisions from ULONA and other current law are continued, reorganized, or updated without substantive changes. The bill also updates references to ULONA in other areas of statute. This summary sets forth the RULONA structure and notes provisions containing substantive changes or additions to ULONA and other current law provisions.

Except as noted below, all sections of the bill will take effect January 1, 2022.

Definitions (Section 2)

RULONA continues definitions from current law, modifying the definitions of “acknowledgment,” “notarial act,” and “verification on oath or affirmation.”

RULONA adds definitions of “electronic,” “electronic signature,” “notary public,” “official stamp,” “person,” “record,” “sign,” “signature,” “stamping device,” and “state.”

Date of Applicability (Section 3)

RULONA states it applies to a notarial act performed on or after January 1, 2022.

Authority to Perform Notarial Act (Section 4)

RULONA draws most of the language of this section from current law and adds a provision allowing a notarial officer to certify that a tangible copy of an electronic record is an accurate copy of the electronic copy.

Requirements for Certain Notarial Acts (Section 5)

RULONA continues these provisions from ULONA in a substantially similar form.

Personal Appearance Required (Section 6)

RULONA requires, if a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature to appear personally before the notarial officer.

Identification of Individual (Section 7)

RULONA continues these provisions from ULONA, adding a “dealings sufficient to provide reasonable certainty” standard to the “personally known” qualification and providing

additional detail regarding the identification documents or verification or affirmation of a credible witness that may be used to identify an individual. RULONA allows a notarial officer to require an individual to provide additional information or identification credentials necessary to assure the officer of the individual's identity.

Authority to Refuse to Perform Notarial Act (Section 8)

RULONA allows a notarial officer to refuse to perform a notarial act if the officer is not satisfied that the individual executing the record is competent or has capacity to execute the record, or that the individual's signature is knowingly and voluntarily made. A notarial officer may refuse to perform a notarial act unless refusal is prohibited by Kansas law or federal law.

Signature if Individual is Unable to Sign (Section 9)

RULONA provides, if an individual is physically unable to sign a record, the individual may direct another individual, other than the notarial officer, to sign the individual's name on the record, with specified language to be added by the notarial officer in such cases.

Notarial Act in Kansas (Section 10)

RULONA continues these provisions from ULONA in a substantially similar form and adds a provision stating the signature and title of any of the officers specifically listed in the section shall conclusively establish the authority of the officer to perform the notarial act.

Notarial Act in Another State (Section 11)

RULONA continues these provisions from ULONA in a substantially similar form and adds a provision stating the signature and title of any of the officers specifically listed in the section shall conclusively establish the authority of the officer to perform the notarial act.

Notarial Act under Authority of a Federally Recognized Indian Tribe (Section 12)

RULONA provides that a notarial act performed by certain specified individuals, under the authority and in the jurisdiction of a federally recognized Indian tribe, has the same effect under Kansas law as if performed by a Kansas notarial officer. The signature and title of such individual shall be *prima facie* evidence that the signature is genuine and the individual holds the designated title. The signature and title of a tribal notary public, judge, clerk, or deputy clerk of a court shall conclusively establish the authority of the officer to perform the notarial act.

Notarial Act under Federal Authority (Section 13)

RULONA continues these provisions from ULONA in a substantially similar form, consolidating them from two ULONA sections and rewording language regarding individuals in military service and individuals designated notarizing officers by the U.S. Department of State for performing notarial acts overseas.

Foreign Notarial Act (Section 14)

RULONA continues this section from ULONA but reorganizes its provisions, removes a list of specific persons who could perform a notarial act in a foreign nation, and clarifies a provision regarding apostilles.

Notarial Act Performed for a Remotely Located Individual (Section 15)

RULONA allows a remotely located individual, defined as an individual who is not in the physical presence of the notary public who performs a notarial act, to comply with the personal appearance requirement of Section 6 by using communication technology to appear before a notary public.

A notary public in Kansas could perform a notarial act using communication technology for a remotely located individual if:

- The notary public has personal knowledge of the identity of the individual, has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notary public, or has 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 reasonably to 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; and
- For a remotely located individual located outside the United States, the record has a specified connection with the United States, and the act is not prohibited by the foreign state in which the individual is located.

The bill requires the certificate for a remotely performed notarial act to indicate the act was performed using communication technology and specifies how short-form certificates may be sufficient.

The bill requires retention of an audio-visual recording created under this section for ten years, unless a different period is required by rules and regulations.

The bill provides requirements before a notary public performs an initial remote notarial act, including notification to the Secretary of State, identification of the technology to be used, and evidence of completion of the course of study and passing of the examination required by Section 23. If the technology and identity proofing complies with any standards established by the Secretary of State in rules and regulations, the Secretary of State must approve the technology and identity proofing. The bill requires the notary public to include a fee set by the Secretary of State, not to exceed \$25, with the notification, and the bill requires the Secretary of

State to remit these fees to the State Treasurer to deposit in the State Treasury to the credit of the Information and Services Fee Fund.

For purposes of this section, in addition to the definition of “remotely located individual,” the bill defines “communication technology,” “foreign state,” “identity proofing,” and “outside the United States.”

Certificate of a Notarial Act (Section 16)

RULONA continues provisions from ULONA and other current law regarding a certificate of a notarial act, with the following additions:

- RULONA clarifies the certificate must be executed contemporaneously with the performance of the notarial act and be signed by the notary public in the same manner as on file with the Secretary of State, makes use of the official stamp on the certificate mandatory, and provides for use of an official stamp for certification of electronic records; and
- RULONA also prohibits a notarial officer from affixing the officer’s signature to, or logically associate it with, a certificate until the notarial act has been performed, and specifies requirements for attaching, affixing, or associating a certificate with tangible and electronic records, including compliance with any rules and regulations adopted by the Secretary of State.

Short-Form Certificates (Section 17)

RULONA replaces ULONA’s statutory short-form certificates with a provision requiring the Secretary of State to adopt rules and regulations providing short-form certificates of notarial acts that are sufficient for the purposes indicated, if completed with the information required by Section 16.

This section is effective upon publication in the statute book.

Official Stamp (Section 18)

RULONA continues this provision from current law, modifying it to focus on stamps instead of seals and to simplify and clarify its language.

Stamping Device (Section 19)

RULONA states a notary public is responsible for the security of the notary public’s stamping device and shall not allow another individual to use the device to perform a notarial act. This section sets forth required actions for disabling or rendering the stamping device unusable upon commission resignation, revocation, or expiration; stamp expiration; or the death or incompetency of the notary public. If the stamping device is lost or stolen, this section

requires, upon discovery, the notary public or notary public's personal representative or guardian to promptly notify the Secretary of State.

Journal (Section 20)

RULONA requires a notary public to maintain a single journal in a tangible medium, or one or more journals in an electronic format, in which the notary public chronicles all acts the notary public performs, and requires the notary public retain this journal for ten years after the performance of the last notarial act chronicled in the journal. The bill provides additional specific requirements for the creation and maintenance of the journal, as well as for the timing and contents of entries in the journal.

If a journal is lost or stolen, the notary public is required, upon discovery, to promptly notify the Secretary of State.

Upon resignation, revocation, or suspension of a commission, the notary public must retain the journal for the required ten-year period and inform the Secretary of State of the location of the journal. Alternatively, the notary public may transmit the journal to a repository approved by the Secretary of State.

Upon death or incompetency of a notary public, the notary public's personal representative, guardian, or any other person knowingly in possession of the journal must retain or transmit the journal and inform the Secretary of State of the journal's location.

Notarial Acts on Electronic Records (Section 21)

RULONA provides a notary public may select one or more tamper-evident technologies to perform notarial acts with respect to electronic records, and a person may not require a notary public to perform a notarial act with respect to an electronic record with a technology the notary public has not selected.

RULONA provides requirements before a notary public performs an initial notarial act with respect to an electronic record, including notification to the Secretary of State, identification of the technology to be used, and evidence of completion of the course of study and passing of the examination required by Section 23. If the technology complies with standards established by the Secretary of State in rules and regulations, the Secretary of State must approve the technology. The bill requires the notary public to include a fee set by the Secretary of State, not to exceed \$25, with the notification, and the Secretary of State must remit these fees to the State Treasurer to deposit in the State Treasury to the credit of the Information and Services Fee Fund.

RULONA allows a register of deeds to accept for recording a tangible copy of an electronic record containing a notarial certificate as satisfying any requirements that a record accepted for recording be an original, if the notarial officer executing the notarial certificate certifies the tangible copy is an accurate copy of the electronic record.

Commission as Notary Public; Qualifications (Section 22)

RULONA continues provisions from current law regarding application for and commission as a notary public, with the following modifications.

The bill adds to the required contents of the application evidence of the completion of the course of study and passing of examination regarding electronic records, if required.

The required assurance in the form of a surety bond or its functional equivalent is increased from \$7,500 to \$12,000. The bill clarifies this assurance would cover acts performed during the term of the notary public's commission; if the notary public violates law with respect to notaries public in Kansas, the surety or issuing entity shall be liable under the assurance; and a notary public may perform notarial acts in Kansas only during the period that a valid assurance is on file with the Secretary of State. The bill changes the deadline for a required notice regarding cancellation of assurance from 14 days to 30 days before canceling the assurance.

The bill adds to the requirements for an applicant that the applicant be able to read and write the English language and not be disqualified to receive a commission by Section 24 of RULONA.

The bill clarifies a commission to act as a notary public authorizes the notary public to perform notarial acts and does not provide the notary public any immunity or benefit conferred by Kansas law on public officials or employees.

Examination Regarding Electronic Records (Section 23)

RULONA requires, before performing an initial notarial act with respect to an electronic record, a notary public to pass an examination administered by the Secretary of State or an entity approved by the Secretary of State. The examination must be based on a course of study offered regularly by the Secretary of State or an approved entity to Kansas notaries public covering the laws, rules, procedures, and ethics relevant to notarial acts with respect to electronic records.

Grounds to Deny or Take Other Actions Regarding a Commission (Section 24)

RULONA continues and expands provisions from current law regarding disciplinary actions the Secretary of State may take respecting a commission as a notary public.

RULONA adds "suspend" and "impose a condition" to the disciplinary actions the Secretary of State could take; allows the Secretary of State to take disciplinary action for any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a notary public; and changes the listing of grounds for disciplinary action from an exhaustive list to an exemplary list, modifying this listing to:

- Expand grounds involving application for a commission;

- Reword grounds involving convictions of a crime, including adding entering into a diversion agreement;
- Add grounds involving findings or admissions in any legal proceeding or disciplinary action based on fraud, dishonesty, or deceit;
- Add grounds involving violation of a rule and regulation regarding a notary public;
- Add grounds involving disciplinary action regarding a notary public commission in another state; and
- Add grounds involving failure to maintain an assurance as required by RULONA.

The bill states the authority of the Secretary of State to take disciplinary action shall not prevent a person from seeking and obtaining other criminal or civil penalties provided by law.

Prohibited Acts (Section 25)

RULONA continues and expands provisions regarding prohibited acts for notaries.

It clarifies a commission as a notary public does not authorize an individual to:

- Assist persons in drafting legal records, give legal advice, or otherwise practice law;
- Act as an immigration consultant or an expert on immigration matters;
- Represent a person in a judicial or administrative proceeding relating to immigration to the United States, U.S. citizenship, or related matters; or
- Receive compensation for performing any of the activities listed above.

The bill continues current prohibitions on performing a notarial act when the notary is a party or has a direct financial or beneficial interest and expands these to include the notary's spouse.

The bill prohibits a notary public from engaging in false or deceptive advertising and provides additional detail regarding continuing restrictions on and requirements for advertisements or representations by a notary public.

Validity of Notarial Acts (Section 26)

RULONA provides, except as otherwise provided in this act, that the failure of a notarial officer to perform a duty or meet a requirement specified in RULONA shall not invalidate a notarial act. The validity of a notarial act under RULONA shall not prevent an aggrieved person

from seeking to invalidate the record or transaction that is the subject of the notarial act or from seeking other remedies under state or federal law. This section specifies it shall not validate a purported notarial act performed by an individual who does not have the authority to perform notarial acts.

Rules and Regulations (Section 27)

RULONA requires the Secretary of State to adopt rules and regulations:

- To implement RULONA. Rules and regulations adopted regarding the performance of notarial acts with respect to electronic records could not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification. The bill provides a nonexclusive list of topics such rules and regulations may address; and
- Regarding notarial acts using communication technology for a remotely located individual, including several specified standards, requirements, and procedures.

The bill requires the Secretary of State, in adopting rules and regulations regarding notarial acts respecting electronic records, to consider certain standards, practices, and customs, to the extent they are consistent with RULONA.

This section will be effective upon publication in the statute book.

Commission in Effect (Section 28)

RULONA provides a commission or appointment as a notary public in effect on January 1, 2022, shall continue until its date of expiration. Commission renewal for and performance of notarial acts by such notaries public on or after January 1, 2022, shall be subject to RULONA.

Savings Clause (Section 29)

RULONA provides it does not affect the validity or effect of a notarial act performed before January 1, 2022, and a cause of action accruing against a notary public or notary public's security before January 1, 2022, shall be governed by any statute or other rule amended or repealed by the bill as if the amendment or repeal had not occurred.

Other Provisions (Sections 30-31)

Like ULONA, RULONA includes a uniformity provision (Section 30). RULONA also adds a provision specifying RULONA's interaction with the Electronic Signatures in Global and National Commerce Act (Section 31).

Updates to Other Areas of Statute (Sections 31-40)

Section 32 amends a statute governing notarization and acknowledgment of electronic transactions to remove a provision authorizing the Secretary of State to promulgate rules and regulations establishing procedures for an electronic notarization. [Note: A substantially similar provision is added in Section 27.]

Sections 33 through 41 update references from ULONA to RULONA in various statutes.

Section 42 adds a provision to the Uniform Real Property Electronic Recording Act stating that a requirement that a document or signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature, and a physical or electronic image of a stamp, impression, or seal is not required to accompany an electronic signature. This section also removes an outdated effective date.

Effective Date (Section 38 and throughout)

Sections 17, 27, and 32 are effective upon publication in the statute book. All other sections are effective January 1, 2022.