
OLR Bill Analysis

SB 99 (File 211, as amended by Senate "A")*

AN ACT ESTABLISHING A WORKING GROUP TO STUDY REMOTE NOTARIAL ACTS AND THE REVISED UNIFORM LAW ON NOTARIAL ACTS.

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BACKGROUND

SUMMARY

This bill adopts a modified version of the Revised Uniform Law on Notarial Acts (RULONA). Among other things, it provides for the recognition of notarial acts, under specified procedures, that are performed both within and outside the state. It prescribes requirements

for different types of notarial acts as well as the certificates that must be executed along with these acts. It also authorizes the secretary of the state to adopt implementing regulations and provides that any regulations she adopts regarding the performance of notarial acts for electronic records must be technology-neutral.

The bill also, with certain exceptions, authorizes the use of remote notarization (i.e., the notary and person signing a document are not in the same physical location). The bill prescribes conditions for remote notarization and prohibits its use for several specified acts (e.g., real estate closings).

The bill also makes technical and conforming changes.

*Senate Amendment "A" replaces the original bill, which required the Commerce Committee chairpersons to convene a working group to examine and make recommendations on whether (1) to adopt RULONA and (2) remote notarization should be permitted with respect to real estate and trusts and estates transactions.

EFFECTIVE DATE: October 1, 2022

§ 1, 3 & 28-30 — TITLE AND APPLICABILITY

Entitles §§ 1-30 of the bill as the "Connecticut Revised Uniform Law on Notarial Acts (2018)"; specifies that the bill applies to notarial acts on or after October 1, 2022

- Entitles §§ 1-30 of the bill as the "Connecticut Revised Uniform Law on Notarial Acts (2018)"
- Specifies that the bill applies to notarial acts on or after October 1, 2022, and that its provisions do not affect the validity or effect of a notarial act performed before October 1, 2022
- Specifies that in applying and construing its provisions, consideration must be given to the need to promote uniformity of law in the bill's subject matter among states that enact RULONA
- Provides that it modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce (E-

SIGN) Act, 15 U.S.C. § 7001 et seq., except for the provisions of that act concerning consumer disclosures (see BACKGROUND)

- Specifies that it does not authorize electronic delivery of specified notices that are not subject to E-SIGN (e.g., court orders or notices)

§ 2 — DEFINITIONS

Defines terms used in the bill

- Defines terms used in the bill, including the following
 - Defines “notarial act” as an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under state law, including taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument
 - Defines “sign” as presenting intent to authenticate or adopt a record to (1) execute or adopt a tangible symbol or (2) attach to or logically associate an electronic symbol, sound, or process with the record
 - Defines “electronic signature” as an electronic symbol, sound, or process attached to or logically associated with a record that is executed or adopted by someone with the intent to sign the record

§§ 4 & 26 — AUTHORITY TO PERFORM NOTARIAL ACTS

Provides authority to perform notarial acts; prohibits certain acts for which the officer has a conflict of interest

- Permits a notarial officer to perform notarial acts authorized by the bill or other state law
- Prohibits a notarial officer from performing a notarial act with respect to a record (1) to which the officer or the officer’s spouse is a party or (2) in which either of them has a direct beneficial

interest; specifies that these notarial acts are voidable

- Allows a notarial officer to certify that a tangible copy of an electronic record is an accurate copy of the electronic record
- Generally provides that a notarial officer's failure to perform a duty or meet a requirement specified in the bill does not invalidate a notarial act performed by the officer (other than one for which the officer has a conflict of interest, as described above)
- Specifies that the validity of a notarial act does not prevent an aggrieved person from seeking (1) to invalidate the record or transaction that is the subject of the notarial act or (2) other remedies based on other state or federal law

§§ 5 & 7 — REQUIREMENTS FOR CERTAIN NOTARIAL ACTS AND IDENTITY VERIFICATION

Establishes requirements for certain notarial acts and identity verification requirements, which are similar to those in current law

- Requires a notarial officer who takes an acknowledgment of a record or a verification of a statement on oath or affirmation to determine, from personal knowledge or satisfactory evidence of the individual's identity, that the (1) individual appearing before the officer and making the acknowledgment or verification has the claimed identity and (2) signature on the record or statement is that of the individual
- Requires a notarial officer who witnesses or attests to a signature to determine, from personal knowledge or satisfactory evidence of the individual's identity, that the individual appearing before the officer and signing the record has the claimed identity
- Similarly establishes requirements for certifying or attesting a copy, and protesting a negotiable instrument
- Specifies what constitutes personal knowledge of identity or satisfactory evidence of identity

§ 6 — REQUIREMENT FOR PERSONAL APPEARANCE

Generally requires a personal appearance for a notarial act other than one performed through remote notarization

- Specifies that if a notarial act relates to a statement made in a record or a signature executed on a record, the individual making the statement or executing the signature must appear in person before the notarial officer
- Exempts remote notarization, as established by the bill, from this requirement (see § 15 below)

§ 8 — REFUSAL TO PERFORM NOTARIAL ACT

Establishes conditions under which a notarial officer may refuse to perform a notarial act

- Allows a notarial officer to refuse to perform a notarial act (unless the law prohibits him or her from doing so) if the officer is not satisfied that (1) the individual executing the record is competent or has the capacity to execute it or (2) the individual made the signature knowingly and voluntarily

§ 9 — SIGNATURE IF INDIVIDUAL IS UNABLE TO SIGN

Allows someone who is physically unable to sign a record to direct someone else (other than the notarial officer) to sign his or her name on the record

- Allows someone who is physically unable to sign a record to direct someone else (other than the notarial officer) to sign his or her name on the record
- If this occurs, the notarial officer must insert on the record the phrase “signature affixed by (name of other individual) at the direction of (name of individual)” or similar words

§ 10 — NOTARIAL ACTS PERFORMED IN THE STATE

Specifies who may perform a notarial act in the state

- Permits notarial acts in the state to be performed by the same people authorized by current law to take acknowledgements (notaries public; judges, court clerks, and deputy clerks; family support magistrates; licensed attorneys; town clerks; or justices of the peace), in addition to anyone authorized by state law to perform the specific act

- Removes the requirement that a court clerk or deputy clerk have a seal if taking an acknowledgment
- Provides that the signature and title of someone performing a notarial act in Connecticut are prima facie evidence that the signature is genuine and that the individual holds the designated title
- Specifies people whose signature and title conclusively establish their authority to perform notarial acts

§§ 11-13 — NOTARIAL ACTS PERFORMED OUT OF STATE, UNDER FEDERAL LAW, OR UNDER TRIBAL JURISDICTION

Specifies when notarial acts performed out of state are valid in Connecticut

- Provides that notarial acts legally performed in other states or U.S. territories, under federal law, or on federally recognized Indian reservations are valid in Connecticut (current law also allows notarial acts outside of the state or under federal law by similar categories of people as authorized by the bill, with one exception)
- Specifies that the signature and title of someone performing such a notarial act are prima facie evidence that the signature is genuine and that the individual holds the designated title
- Specifies people whose signature and title conclusively establish their authority to perform notarial acts, as described above

§ 14 — NOTARIAL ACTS PERFORMED UNDER THE JURISDICTION OF A FOREIGN COUNTRY OR MULTINATIONAL ORGANIZATION

Specifies when notarial acts performed in a foreign country are valid in Connecticut

- Provides that the following notarial acts have the same effect under state law as if performed in-state by a state notarial officer: those performed under the authority (1) and in the jurisdiction of a foreign government or (2) of a multinational or international governmental organization
- Specifies requirements to conclusively establish the authority of

a foreign officer to perform notarial acts

§§ 15, 35 & 36 — REMOTE NOTARIZATION

Authorizes remote notarization under specified conditions; subjects technology for remote notarization to approval by SOTS; prohibits remote notarization for certain acts (e.g., real estate closings)

Definitions (§ 15 (a))

- Defines relevant terms:
 - Specifically, “communication technology” is an electronic device or process that (1) allows a notary and remotely located individual to communicate simultaneously by sight and sound and (2) when necessary and consistent with other applicable law, facilitates communication with a remotely located individual who has a vision, hearing, or speech impairment
 - “Identity proofing” is a process or service by which a third party provides a notary public with a means to verify a remotely located individual’s identity, using a review of personal information from public or private data sources

Personal Appearance (§ 15 (b))

- Allows a remotely located individual to use communication technology to satisfy the bill’s personal appearance requirements (see § 6)

Conditions for Remote Notarization (§ 15 (c))

- Allows remote notarization under the following conditions:
 - the notary verifies the individual’s identity,
 - the notary confirms that the record before him or her is the record the individual seeks to have notarized, and
 - the notary or someone on his or her behalf creates an audio-visual (A/V) recording of the notarial act
- The bill establishes additional requirements if the remotely

located individual is outside the United States

- With respect to verifying identity, the bill requires the following:
 - personal knowledge by the notary of the individual's identity,
 - oath or affirmation from a credible witness who appears before the notary, or
 - satisfactory evidence of the individual's identity by at least two different types of identity proofing

Certificates of Notarial Acts (§ 15 (d))

- Requires that certificates of notarial acts (see §§ 16 & 17) indicate when an act was performed with communication technology

Short-form Certificates (§ 15 (e))

- Establishes additional requirements for short-form certificates of notarial acts

Records Retention (§ 15 (f))

- Requires that A/V recordings be retained for at least 10 years unless regulations adopted by the secretary of the state (SOTS) establish a different retention period

Technology Used for Remote Notarization (§ 15 (g))

- Requires notaries to notify SOTS before they perform their initial remote notarization and identify the technology they intend to use
- Prohibits notaries from using any remote notarization technology not approved by SOTS; unauthorized use is grounds for disciplining a notary, up to and including revoking his or her commission

Regulations (§ 15 (h))

- Requires SOTS to adopt regulations concerning remote

notarization, including the following:

- prescribing the means of performing remote notarization,
- establishing standards for communication technology and identity proofing,
- establishing requirements or procedures for approving communication technology providers and the identity proofing process, and
- establishing standards and retention requirements for A/V recordings

Regulations (§ 15 (i))

- Specifies factors that SOTS must consider when adopting, amending, or repealing remote notarization regulations

Prohibitions (§§ 15 (j), 35 & 36)

- Prohibits remote notarization under the following circumstances:
 - making and executing a will, codicil, or trust
 - executing health care instructions (e.g., for withdrawing life support)
 - designating a standby guardian of a minor for specified contingencies (e.g., mental incapacity of the principal)
 - designating a person for decision-making and certain rights and obligations (e.g., withdrawing life support)
 - executing a living will
 - appointing an agent under power of attorney unless limited to real property transactions and a date certain
 - conducting a real estate closing
- Makes conforming changes to the Uniform Acknowledgment

Act with respect to real estate closings (§§ 35 & 36)

§ 16 & 17 — CERTIFICATE OF NOTARIAL ACT

Prescribes requirements for certificates of notarial acts, including short-form certificates

- Generally follows current law in requiring that a notarial act be evidenced by a certificate and establishes various related certificate requirements (e.g., that it be executed contemporaneously with the act's performance)
- Prescribes short form certificates of notarial acts in certain categories

§§ 18 & 19 — OFFICIAL STAMP AND DEVICE FOR NOTARIES

Establishes certain requirements for stamping devices

- Defines a stamping device and establishes requirements for a notary public's official stamp
- Establishes certain requirements for stamping devices, including security-related requirements
- Requires a notary or his or her personal representative to disable the device under certain circumstances

§ 20 — NOTARY TECHNOLOGY FOR ELECTRONIC RECORDS

Establishes technology requirements for notarizing electronic records

- Allows a notary public to select tamper-evident technologies for performing notarial acts with respect to electronic records and prohibits anyone from requiring that the notary public use any other technology
- Requires a notary public performing his or her first notarial act for an electronic record to (1) notify SOTS and (2) identify the technology he or she will use (which must conform to SOTS-established regulations, see § 27)
- Requires town clerks to accept for recording tangible copies of electronic records that contain a notarial certificate satisfying certain requirements

- Requires that the recording include a specified declaration of authenticity

§§ 21, 22 & 31-33 — NOTARY QUALIFICATIONS, APPOINTMENTS, AND RENEWALS

Modifies current law's requirements concerning notary qualifications, applications, appointments, and renewals

Qualifications (§ 21)

- Modifies qualification criteria for someone seeking appointment as a notary public, requiring that the notary be (1) a U.S. citizen or permanent legal resident and (2) able to read and write English
- Allows non-residents with a place of employment or practice in Connecticut to become a notary, even if it is not the person's principal place of business
- Requires applicants to execute an oath of office and submit it to SOTS before they may be appointed
- Specifies that notaries public are not covered by state laws providing immunity or benefits to public officials or employees
- Specifies that a notary's term is five years (as under current law)

Course of Study (§ 22)

- Requires SOTS, or an approved entity, to regularly offer a course of study to notary applicants without commissions and requires applicants to complete it

Application and Appointment (§§ 31 & 32)

- Allows SOTS to require that applications be submitted online and that the applicant provide certain identifying information, including a Social Security number or other unique identifier
- Allows SOTS to prescribe an application fee by regulation (under current law, the fee is \$120)
- Provides that the fee remains \$120 until SOTS changes it by regulation

- Allows notaries appointed before October 1, 2022, to continue performing notarial acts until their term expires, at which point their renewal or reinstatement would be subject to the bill's provisions
- Repeals a provision in current law requiring notaries to record, with the town clerk, their certificate of appointment and oath of office
- Repeals obsolete language

Renewals (§ 33)

- Allows SOTS to prescribe a renewal fee by regulation (under current law, the fee is \$60)
- Provides that the fee remains \$60 until SOTS changes it by regulation
- Allows SOTS to provide a 90-day grace period for the renewal of a notary appointment; after 90 days, the notary must apply for reinstatement
- Allows SOTS to require a course of study for renewals and reinstatements (see § 22)

§ 23 — DISCIPLINARY ACTION

Establishes grounds for SOTS to take disciplinary action against a notary (suspend or revoke a commission)

- Allows SOTS to deny, refuse to renew, revoke, suspend, or impose a condition on an appointment as notary public for any act or omission that demonstrates a lack of honesty, integrity, competence, or reliability to act as a notary public
- Lists several acts or omissions that may constitute grounds for these actions (e.g., conviction of any felony or a crime involving fraud, dishonesty, or deceit)
- Specifies factors that SOTS must consider in determining whether to take disciplinary action against a notary

- Prohibits SOTS from taking disciplinary action based on a criminal conviction if she finds, based on the totality of the circumstances, that the applicant possesses the character and fitness necessary to perform the duties of a notary public in a manner consistent with the law

§ 24 — ELECTRONIC DATABASE OF NOTARIES

Requires SOTS to maintain a database of notaries public

- Requires SOTS to maintain an electronic database of notaries public for people to verify a notary's authority to perform notarial acts
- The database must also indicate whether a notary has notified the secretary that he or she will be performing notarial acts on electronic records

§ 25 — PROHIBITED ACTS

Establishes various prohibitions on notaries public

- Establishes various prohibitions on notaries, including the following (some of which are also in current law):
 - assisting people or entities in the drafting of legal records, giving legal advice, conducting a real estate closing, or otherwise practicing law, or advertising or representing that they may do these things (unless the notary is also a licensed attorney)
 - acting as an immigration consultant or an expert on immigration matters
 - engaging in false or deceptive advertising
 - using the term "notario" or "notario publico"
 - withholding access to or possession of an original record provided by someone asking the notary to perform a notarial act, except as otherwise allowed by law

§ 27 — REGULATIONS

Requires SOTS to adopt implementing regulations

- Requires SOTS to adopt regulations to implement the bill's provisions
- Among other things, the regulations must prescribe the manner of performing notarial acts regarding tangible and electronic records
- Specifies factors that SOTS must consider when adopting, amending, or repealing regulations about notarial acts with respect to electronic records

§ 34 — FEE FOR NOTARIAL ACTS

Allows SOTS to prescribe fees for notarial acts

- Allows SOTS to prescribe the (1) fee cap for notarial acts and (2) mileage reimbursement (not to exceed IRS standards)
- Under current law, the fee cap is \$5 per notarial act, and the mileage reimbursement is 35 cents per mile

§ 37 — TECHNICAL CHANGE

Makes a technical change

- Makes a technical change

§ 38 — REPEALER

Repeals several provisions in current law that are generally replaced by the bill

- Repeals the following provisions in current law:
 - definitions relating to notaries (CGS § 3-94a, replaced by § 2 of the bill)
 - notary seals, certificates, signatures, prohibited acts, and disqualifications (CGS §§ 3-94f to -94k, generally replaced by other provisions in the bill)
 - death of a notary (CGS § 3-94q, replaced by § 19(a) of the bill)

- prohibition on giving legal advice or using title “notario” or “notario publico” (CGS § 3-95a, generally replaced by § 25 of the bill) (see BACKGROUND)

BACKGROUND

E-SIGN

The federal Electronic Signatures in Global and National Commerce Act (E-SIGN) (15 U.S.C. § 7001 et seq.) validates the use of electronic records and signatures. Connecticut has also enacted the Connecticut Uniform Electronic Transactions Act (CUETA) (CGS §§ 1-266 to 1-286), which also validates the use of such records and signatures. The two overlap significantly, although they are not identical. For example, E-SIGN applies only to interstate transactions, not intrastate transactions. CUETA provides that it supersedes, modifies, and limits the federal law except for E-SIGN’s consumer disclosure provisions (CGS §§ 1-286).

Notario Publico

In many Spanish-speaking countries, a “notario publico” is authorized to perform certain services that in the United States are reserved to lawyers (Connecticut Secretary of the State, Notary Public Manual, pg. 13).

COMMERCE COMMITTEE

Commerce Committee

Joint Favorable

Yea 23 Nay 0 (03/17/2022)