

CERTIFICATION OF ENROLLMENT

SENATE BILL 5641

66th Legislature
2019 Regular Session

Passed by the Senate February 13, 2019
Yeas 47 Nays 0

President of the Senate

Passed by the House April 12, 2019
Yeas 94 Nays 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5641** as passed by Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SENATE BILL 5641

Passed Legislature - 2019 Regular Session

State of Washington

66th Legislature

2019 Regular Session

By Senators Holy, Pedersen, and Padden; by request of Uniform Law Commission

Read first time 01/25/19. Referred to Committee on Law & Justice.

1 AN ACT Relating to electronic notarial acts by remotely located
2 individuals; amending RCW 42.45.020, 42.45.040, 42.45.130, 42.45.140,
3 42.45.900, 9A.60.050, 65.08.030, and 65.08.070; adding a new section
4 to chapter 42.45 RCW; prescribing penalties; and providing an
5 effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 42.45
8 RCW to read as follows:

9 (1) The definitions in this subsection apply throughout this
10 section unless the context clearly requires otherwise.

11 (a) "Communication technology" means an electronic device or
12 process that:

13 (i) Allows an electronic records notary public and a remotely
14 located individual to communicate with each other simultaneously by
15 sight and sound; and

16 (ii) When necessary under and consistent with other applicable
17 law, facilitates communication with a remotely located individual
18 with a vision, hearing, or speech impairment.

19 (b) "Foreign state" means a jurisdiction other than the United
20 States, a state, or a federally recognized Indian tribe.

1 (c) "Identity proofing" means a process or service by which a
2 third person provides an electronic records notary public with a
3 means to verify the identity of a remotely located individual by a
4 review of personal information from public or private data sources.

5 (d) "Outside the United States" means a location outside the
6 geographic boundaries of the United States, Puerto Rico, the United
7 States Virgin Islands, and any territory, insular possession, or
8 other location subject to the jurisdiction of the United States.

9 (e) "Remotely located individual" means an individual who is not
10 in the physical presence of the electronic records notary public who
11 performs a notarial act under subsection (3) of this section.

12 (2) A remotely located individual complies with RCW 42.45.040 by
13 using communication technology to appear before an electronic records
14 notary public.

15 (3) An electronic records notary public located in this state may
16 perform a notarial act using communication technology for a remotely
17 located individual if:

18 (a) The electronic records notary public:

19 (i) Has personal knowledge under RCW 42.45.050(1) of the identity
20 of the remotely located individual;

21 (ii) Has satisfactory evidence of the identity of the remotely
22 located individual by a verification on oath or affirmation of a
23 credible witness appearing before and identified by the electronic
24 records notary public under RCW 42.45.050(2); or

25 (iii) Has obtained satisfactory evidence of the identity of the
26 remotely located individual by using at least two different types of
27 identity proofing;

28 (b) The electronic records notary public is reasonably able to
29 confirm that a record before the electronic records notary public is
30 the same record in which the remotely located individual made a
31 statement or on which the individual executed a signature;

32 (c) The electronic records notary public, or a person acting on
33 behalf of the electronic records notary public, creates an audio-
34 visual recording of the performance of the notarial act; and

35 (d) For a remotely located individual located outside the United
36 States:

37 (i) The record:

38 (A) Is to be filed with or relates to a matter before a public
39 official or court, governmental entity, or other entity subject to
40 the jurisdiction of the United States; or

1 (B) Involves property located in the territorial jurisdiction of
2 the United States or involves a transaction substantially connected
3 with the United States; and

4 (ii) The act of making the statement or signing the record is not
5 prohibited by the foreign state in which the remotely located
6 individual is located.

7 (4) If a notarial act is performed under this section, the
8 certificate of notarial act required by RCW 42.45.130 and the short-
9 form certificate provided in RCW 42.45.140 must indicate that the
10 notarial act was performed using communication technology.

11 (5) A short-form certificate provided in RCW 42.45.140 for a
12 notarial act subject to this section is sufficient if it:

13 (a) Complies with rules adopted under subsection (8)(a) of this
14 section; or

15 (b) Is in the form provided by RCW 42.45.140 and contains a
16 statement substantially as follows: "This notarial act involved the
17 use of communication technology."

18 (6) An electronic records notary public, a guardian, conservator,
19 or agent of an electronic records notary public, or a personal
20 representative of a deceased electronic records notary public shall
21 retain the audio-visual recording created under subsection (3)(c) of
22 this section or cause the recording to be retained by a repository
23 designated by or on behalf of the person required to retain the
24 recording. Unless a different period is required by rule adopted
25 under subsection (8)(d) of this section, the recording must be
26 retained for a period of at least ten years after the recording is
27 made.

28 (7) Before an electronic records notary public performs the
29 electronic records notary public's initial notarial act under this
30 section, the electronic records notary public must notify the
31 director that the electronic records notary public will be performing
32 notarial acts and identify the technologies the electronic records
33 notary public intends to use. If the director has established
34 standards under subsection (8) of this section and RCW 42.45.250 for
35 approval of communication technology or identity proofing, the
36 communication technology and identity proofing must conform to the
37 standards.

38 (8) In addition to adopting rules under RCW 42.45.250, the
39 director may adopt rules under this section regarding performance of
40 a notarial act. The rules may:

1 (a) Prescribe the means of performing a notarial act involving a
2 remotely located individual using communication technology;

3 (b) Establish standards for communication technology and identity
4 proofing;

5 (c) Establish requirements or procedures to approve providers of
6 communication technology and the process of identity proofing; and

7 (d) Establish standards and a period for the retention of an
8 audio-visual recording created under subsection (3)(c) of this
9 section.

10 (9) Before adopting, amending, or repealing a rule governing
11 performance of a notarial act with respect to a remotely located
12 individual, the director must consider:

13 (a) The most recent standards regarding the performance of a
14 notarial act with respect to a remotely located individual adopted by
15 national standard-setting organizations and the recommendations of
16 the national association of secretaries of state;

17 (b) Standards, practices, and customs of other jurisdictions that
18 have laws substantially similar to this section; and

19 (c) The views of governmental officials and entities and other
20 interested persons.

21 **Sec. 2.** RCW 42.45.020 and 2017 c 281 s 4 are each amended to
22 read as follows:

23 (1) A notarial officer may perform a notarial act authorized by
24 this chapter or by law of this state other than this chapter.

25 (2)(a) A notarial officer may not perform a notarial act with
26 respect to a record to which the officer or the officer's spouse or
27 domestic partner is a party, or in which any of the above have a
28 direct beneficial interest.

29 (b) A notarial officer may not notarize the notarial officer's
30 own signature.

31 (c) A notarial act performed in violation of this subsection (2)
32 is voidable.

33 (3) A notarial officer may certify that a tangible copy of an
34 electronic record is an accurate copy of the electronic record.

35 **Sec. 3.** RCW 42.45.040 and 2017 c 281 s 6 are each amended to
36 read as follows:

37 Except as provided in section 1 of this act, if a notarial act
38 relates to a statement made in or a signature executed on a record,

1 the individual making the statement or executing the signature shall
2 appear personally before the notarial officer.

3 **Sec. 4.** RCW 42.45.130 and 2017 c 281 s 15 are each amended to
4 read as follows:

5 (1) A notarial act must be evidenced by a certificate. The
6 certificate must:

7 (a) Be executed contemporaneously with the performance of the
8 notarial act;

9 (b) Be signed and dated by the notarial officer and, if the
10 notarial officer is a notary public, be signed in the same manner as
11 on file with the department;

12 (c) Identify the jurisdiction in which the notarial act is
13 performed;

14 (d) Contain the title of office of the notarial officer;

15 (e) Be written in English or in dual languages, one of which must
16 be English; (~~and~~)

17 (f) If the notarial officer is a notary public, indicate the date
18 of expiration, if any, of the officer's commission; and

19 (g) If the notarial act is performed under section 1 of this act,
20 indicate that the notarial act was performed using communication
21 technology.

22 (2) Regarding notarial act certificates on a tangible record:

23 (a) If a notarial act regarding a tangible record is performed by
24 a notary public, an official stamp must be affixed to or embossed on
25 the certificate.

26 (b) If a notarial act regarding a tangible record is performed by
27 a notarial officer other than a notary public and the certificate
28 contains the information specified in subsection (1)(b), (c), and (d)
29 of this section, an official stamp may be affixed to or embossed on
30 the certificate.

31 (3) Regarding notarial act certificates on an electronic record:

32 (a) If a notarial act regarding an electronic record is performed
33 by an electronic records notary public, an official stamp must be
34 attached to or logically associated with the certificate.

35 (b) If a notarial act regarding an electronic record is performed
36 by a notarial officer other than a notary public and the certificate
37 contains the information specified in subsection (1)(b), (c), and (d)
38 of this section, an official stamp may be attached to or logically
39 associated with the certificate.

1 (4) A certificate of a notarial act is sufficient if it meets the
2 requirements of subsections (1) through (3) of this section and:

3 (a) Is in a short form set forth in RCW 42.45.140;

4 (b) Is in a form otherwise permitted by the law of this state;

5 (c) Is in a form permitted by the law applicable in the
6 jurisdiction in which the notarial act was performed; or

7 (d) Sets forth the actions of the notarial officer and the
8 actions are sufficient to meet the requirements of the notarial act
9 as provided in RCW 42.45.030, 42.45.040, and 42.45.050 or law of this
10 state other than this chapter.

11 (5) By executing a certificate of a notarial act, a notarial
12 officer certifies that the officer has complied with the requirements
13 and made the determinations specified in RCW 42.45.030, 42.45.040,
14 and 42.45.050.

15 (6) A notarial officer may not affix the officer's signature to,
16 or logically associate it with, a certificate until the notarial act
17 has been performed.

18 (7) If a notarial act is performed regarding a tangible record, a
19 certificate must be part of, or securely attached to, the record. If
20 a notarial act is performed regarding an electronic record, the
21 certificate must be affixed to, or logically associated with, the
22 electronic record. If the director has established standards pursuant
23 to RCW 42.45.250 for attaching, affixing, or logically associating
24 the certificate, the process must conform to the standards.

25 **Sec. 5.** RCW 42.45.140 and 2017 c 281 s 16 are each amended to
26 read as follows:

27 The following short form certificates of notarial acts are
28 sufficient for the purposes indicated, if completed with the
29 information required by RCW 42.45.130 (1) through (4) and section 1
30 of this act:

31 (1) For an acknowledgment in an individual capacity:

32 State of

33 County of

34 This record was acknowledged before me on (date) by (name(s) of
35 individuals).

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37 (Signature of notary
38 public)

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(Stamp)

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(Title of office)
My commission expires:
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(date)

(2) For an acknowledgment in a representative capacity:
State of
County of

This record was acknowledged before me on (date) by (name(s) of individuals) as (type of authority, such as officer or trustee) of (name of party on behalf of whom record was executed).

.....
(Signature of notary public)

(Stamp)

.....
(Title of office)
My commission expires:
.....
(date)

(3) For verification on oath or affirmation:
State of
County of

Signed and sworn to (or affirmed) before me on (date) by (name(s) of individuals making statement).

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(Signature of notary public)

(Stamp)

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(Title of office)
My commission expires:
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(date)

(4) For witnessing or attesting a signature:

State of

County of

Signed or attested before me on (date) by (name(s) of individuals).

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(Signature of notary public)

(Stamp)

.....
(Title of office)
My commission expires:

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(date)

(5) For certifying or attesting a copy of a record:

State of

County of

I certify that this is a true and correct copy of a record in the possession of

Dated:
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(Signature of notary public)

(Stamp)

.....
(Title of office)
My commission expires:

.....
(date)

(6) For certifying the occurrence of an event or the performance of any act:

State of

County of

1 I certify that the event described in this document has occurred
2 or been performed.

3 Dated:

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5 (Signature of notary
6 public)

7 (Stamp)

8
9 (Title of office)

10 My commission expires:

11

12 (date)

13 **Sec. 6.** RCW 42.45.900 and 2017 c 281 s 1 are each amended to
14 read as follows:

15 This chapter may be known and cited as the 2018 revised uniform
16 law on notarial acts.

17 **Sec. 7.** RCW 9A.60.050 and 2011 c 336 s 384 are each amended to
18 read as follows:

19 (1) A person is guilty of false certification, if, being an
20 officer authorized to take a proof or acknowledgment of an instrument
21 which by law may be recorded, he or she knowingly certifies falsely
22 that the execution of such instrument was acknowledged by any party
23 thereto or that the execution thereof was proved.

24 (2) A person is guilty of false certification, if, being a
25 notarial officer making a certification authorized by RCW
26 42.45.020(3), he or she knowingly certifies falsely that a tangible
27 copy of an electronic record is an accurate copy of the electronic
28 record.

29 (3) False certification is a gross misdemeanor.

30 **Sec. 8.** RCW 65.08.030 and 1953 c 115 s 1 are each amended to
31 read as follows:

32 (1) An instrument in writing purporting to convey or encumber
33 real estate or any interest therein, which has been recorded in the
34 auditor's office of the county in which the real estate is situated,
35 although the instrument may not have been executed and acknowledged

1 in accordance with the law in force at the time of its execution,
2 shall impart the same notice to third persons, from the date of
3 recording, as if the instrument had been executed, acknowledged, and
4 recorded, in accordance with the laws regulating the execution,
5 acknowledgment, and recording of the instrument then in force.

6 (2) A tangible copy of an electronic record purporting to convey
7 or encumber real estate or any interest therein, which has been
8 recorded in the auditor's office of the county in which the real
9 estate is situated, although the tangible copy may not have been
10 certified by a notarial officer in accordance with RCW 42.45.020(3),
11 imparts the same notice to third persons, from the date of recording,
12 as if the tangible copy had been so certified.

13 **Sec. 9.** RCW 65.08.070 and 2012 c 117 s 208 are each amended to
14 read as follows:

15 (1) A conveyance of real property, when acknowledged by the
16 person executing the same (the acknowledgment being certified as
17 required by law), may be recorded in the office of the recording
18 officer of the county where the property is situated. Every such
19 conveyance not so recorded is void as against any subsequent
20 purchaser or mortgagee in good faith and for a valuable consideration
21 from the same vendor, his or her heirs or devisees, of the same real
22 property or any portion thereof whose conveyance is first duly
23 recorded. An instrument is deemed recorded the minute it is filed for
24 record.

25 (2) A recording officer as defined in RCW 65.08.060(4) may accept
26 for recording under this section a tangible copy of an electronic
27 record containing a notarial certificate as satisfying any
28 requirement that a record accepted for recording be an original, if
29 the notarial officer executing the notarial certificate certifies
30 that the tangible copy is an accurate copy of the electronic record
31 under RCW 42.45.020(3).

32 NEW SECTION. **Sec. 10.** This act takes effect October 1, 2020.

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