

# CERTIFICATION OF ENROLLMENT

## SENATE BILL 5641

Chapter 154, Laws of 2019

66TH LEGISLATURE  
2019 REGULAR SESSION

ELECTRONIC NOTARIAL ACTS

EFFECTIVE DATE: October 1, 2020

Passed by the Senate February  
13, 2019

Yeas 47 Nays 0

KAREN KEISER

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**President of the Senate**

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

Passed by the House April 12, and the House of  
2019 Representatives on the  
Yeas 94 Nays 0 dates hereon set forth.

FRANK CHOPP

BRAD HENDRICKSON

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**Speaker of the House of  
Representatives**

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**Secretary**  
Secretary

Approved April 26, 2019 11:30  
AM

FILED

April 29, 2019

JAY INSLEE

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**Governor of the State of  
Washington**

**Secretary of State  
State of Washington**

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**SENATE BILL 5641**

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## 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.

AN ACT Relating to electronic notarial acts by remotely located individuals; amending RCW [42.45.020](#), [42.45.040](#), [42.45.130](#), [42.45.140](#), [42.45.900](#), [9A.60.050](#), [65.08.030](#), and [65.08.070](#); adding a new section to chapter [42.45](#) RCW; prescribing penalties; and providing an effective date.

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

**NEW SECTION.** **Sec. 1.** A new section is added to chapter [42.45](#) RCW to read as follows:

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

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

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

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

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

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

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

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

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

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

(a) The electronic records notary public:

(i) Has personal knowledge under RCW [42.45.050](#)(1) of the identity of the remotely located individual;

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

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

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

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

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

(i) The record:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The most recent standards regarding the performance of a notarial act with respect to a remotely located individual adopted by national standard-setting organizations and the

recommendations of the national association of secretaries of state;

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

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

**Sec. 2.** RCW [42.45.020](#) and 2017 c 281 s 4 are each amended to read as follows:

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

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

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

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

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

**Sec. 3.** RCW [42.45.040](#) and 2017 c 281 s 6 are each amended to read as follows:

Except as provided in section 1 of this act, 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 shall appear personally before the notarial officer.

**Sec. 4.** RCW [42.45.130](#) and 2017 c 281 s 15 are each amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Is in a short form set forth in RCW [42.45.140](#);

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

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

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

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

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

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

**Sec. 5.** RCW [42.45.140](#) and 2017 c 281 s 16 are each amended to read as follows:

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

(1) For an acknowledgment in an individual capacity:

State of .....

County of .....

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

....

(Signature of notary  
public)

(Stamp)

....

(Title of office)

My commission  
expires:

....

(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).

....  
(Signature of notary  
public)

(Stamp)

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

....  
(date)

(4) For witnessing or attesting a signature:

State of .....

County of .....

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

....  
(Signature of notary  
public)

(Stamp)

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

....  
(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: . . . .  
. . . .  
(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 .....

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

Dated: . . . .  
. . . .  
(Signature of notary  
public)  
(Stamp)  
. . . .  
(Title of office)  
My commission  
expires:  
. . . .  
(date)

**Sec. 6.** RCW [42.45.900](#) and 2017 c 281 s 1 are each amended to read as follows:  
This chapter may be known and cited as the 2018 revised uniform law on notarial acts.

**Sec. 7.** RCW [9A.60.050](#) and 2011 c 336 s 384 are each amended to read as follows:

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

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

(3) False certification is a gross misdemeanor.

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

(1) An instrument in writing purporting to convey or encumber real estate or any interest therein, which has been recorded in the auditor's office of the county in which the real estate is situated, although the instrument may not have been executed and acknowledged in accordance with the law in force at the time of its execution, shall impart the same notice to third persons, from the date of recording, as if the instrument had been executed, acknowledged, and recorded, in accordance with the laws regulating the execution, acknowledgment, and recording of the instrument then in force.

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

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

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

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

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

Passed by the Senate February 13, 2019.

Passed by the House April 12, 2019.

Approved by the Governor April 26, 2019.

Filed in Office of Secretary of State April 29, 2019.

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