

STATEMENT OF SCOPE

Department of Financial Institutions

Rule No.: DFI-CCS ch. 25

Relating to: Notaries Public and Notarial Acts

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

N/A

2. Detailed description of the objective of the proposed rule:

The proposed administrative rules implement 2019 Wisconsin Act 125, which revises state law governing notaries and notarial acts and authorizes notaries public to perform notarial acts for remotely located individuals using approved communication technologies. They are intended to provide clarity to notaries public and enable the flexibility of remote notarization while ensuring the integrity of the notarial process. They also take advantage of the expertise of the newly created remote notary council, a body unique to Wisconsin, to evaluate remote online notarization platforms and providers and ensure that Wisconsin notaries are using providers that implement state-of-the-art safeguards to minimize the risk of fraud or mistake.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The rules are required by 2019 Wisconsin Act 125 and seek to implement the policies stated therein, namely providing (1) a framework to allow remote online notarization in a manner that ensures the integrity of the notarial process; and (2) additional clarity on processes for granting and restricting notary commissions.

The proposed rules would do the following:

****Create procedures to ensure that Wisconsin notaries utilize communication technologies that meet national and state standards for remote online notarizations. The rules would enable remote online notarization providers to apply for approval of their systems, processes, training programs, and safeguards. Providers that have been reviewed and approved may be utilized by Wisconsin notaries to perform notarial acts for remotely located individuals.**

This is similar to the approach in place in Michigan and the emergency remote notarization procedures implemented in Iowa, as well as other states. Unlike Michigan and Iowa, however, Wisconsin can draw upon the expertise of a remote notary council newly created by 2019 Wisconsin Act 125. The rules call for the remote notary council to review a provider's application for approval and to require the provider to appear for questions and provide any information requested by council members to aid in their evaluations.

****Set a maximum fee for performing a notarial act for a remotely located individual. Twenty-five dollars is the prevailing maximum fee among those states (like Wisconsin) that have enacted statutes distinguishing between the maximum fees for in-person and remote notarizations. Locally, Minnesota and Ohio each impose a \$25 maximum fee.**

**Codify certain processes for granting and restricting notary commissions, including the process for making complaints against a notary public, the department's authority to investigate those complaints, and the grounds for restricting or revoking a notary commission. The rules would also clarify the types of prior offenses that are disqualifying when applying for a notary commission and authorize the department to use email as the primary means of providing notices to notaries and notary applicants.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The Department of Financial Institutions commissions and regulates notaries public of this state under Chapter 140, Stats. Section 140.27 authorizes the Department to promulgate administrative rules to implement Chapter 140, including rules establishing maximum fees for performing notarial acts for remotely located individuals; ensuring the integrity of notarial acts for remotely located individuals and preventing fraud or mistake; and prescribing the process for granting and restricting commissions. Section 140.145(8) further authorizes the Department to promulgate administrative rules relating to the performance of notarial acts for remotely located individuals.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

80-150 hours

6. List with description of all entities that may be affected by the proposed rule:

The rule would provide additional options for all entities with staff who perform or utilize notarial services.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

Not applicable. The commissioning and regulation of notaries public is a matter of state law.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

These revisions would not have any material economic impact.

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5/5/2020

Date Submitted