

Amendments to Revised Uniform Law on Notarial Acts

Uniform Law Commission

Section 14A with Comments

As Approved by

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Amendments to Revised Uniform Law on Notarial Acts

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AMENDMENTS TO REVISED UNIFORM LAW ON NOTARIAL ACTS

SECTION 14A. NOTARIAL ACT PERFORMED FOR REMOTELY LOCATED INDIVIDUAL.

(a) In this section:

(1) “Communication technology” means an electronic device or process that:

(A) allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and

(B) when necessary and consistent with other applicable law, facilitates communication with a remotely located individual who has a vision, hearing, or speech impairment.

(2) “Foreign state” means a jurisdiction other than the United States, a state, or a federally recognized Indian tribe.

(3) “Identity proofing” means a process or service by which a third person provides a 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.

(4) “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.

(5) “Remotely located individual” means an individual who is not in the physical presence of the notary public who performs a notarial act under subsection (c).

(b) A remotely located individual may comply with Section 6 by using communication technology to appear before a notary public.

(c) A notary public located in this state may use communication technology to perform a

notarial act for a remotely located individual if:

(1) the notary public:

(A) has personal knowledge under Section 7(a) of the identity of the remotely located individual;

(B) has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notary public under Section 7(b) or this section; or

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

(2) 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;

(3) 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

(4) for a remotely located individual located outside the United States:

(A) the record:

(i) 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

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

(B) 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.

[(d) A notary public located in this state may use communication technology under

subsection (c) to take an acknowledgment of a signature on a tangible record physically present before the notary public if the record is displayed to and identified by the remotely located individual during the audio-visual recording under subsection (c)(3).]

[(e) The requirement under subsection (c)(2) for the performance of a notarial act with respect to a tangible record not physically present before the notary public is satisfied if:

(1) the remotely located individual:

(A) during the audio-visual recording under subsection (c)(3), signs:

(i) the record; and

(ii) a declaration, in substantially the following form, that is part of

or securely attached to the record:

I declare under penalty of perjury that the record of which this declaration is a part or to which it is attached is the same record on which (name of notary public), a notary public, performed a notarial act and before whom I appeared by means of communication technology on (date).

Signature of remotely located individual

Printed name of remotely located individual; and

(B) sends the record and declaration to the notary public not later than [three] days after the notarial act was performed; and

(2) the notary public:

(A) in the audio-visual recording under subsection (c)(3), records the individual signing the record and declaration; and

(B) after receipt of the record and declaration from the individual,

executes a certificate of notarial act under Section 15, which must include a statement in substantially the following form:

I (name of notary public) witnessed, by means of communication technology, (name of remotely located individual) sign the attached record and declaration on (date).

(f) A notarial act performed in compliance with subsection (e) complies with Section 15(a)(1) and is effective on the date the remotely located individual signed the declaration under subsection (e)(1)(A)(ii).

(g) Subsection (e) does not preclude use of another procedure to satisfy subsection (c)(2) for a notarial act performed with respect to a tangible record.]

[(h) A notary public located in this state may use communication technology under subsection (c) to administer an oath or affirmation to a remotely located individual if, except as otherwise provided by other law of this state, the notary public:

(1) identifies the individual under subsection (c)(1);

(2) creates or causes the creation under subsection (c)(3) of an audio-visual recording of the individual taking the oath or affirmation; and

(3) retains or causes the retention under subsection (k) of the recording.]

(i) If a notarial act is performed under this section, the certificate of notarial act under Section 15 and the short-form certificate under Section 16 must indicate that the notarial act was performed using communication technology.

(j) A short-form certificate under Section 16 for a notarial act subject to this section is sufficient if it:

(1) complies with rules adopted under subsection (m)(1); or

(2) is in the form under Section 16 and contains a statement in substantially the

following form:

This notarial act involved the use of communication technology.

(k) A notary public, a guardian, conservator, or agent of a notary public, or a personal representative of a deceased notary public shall retain the audio-visual recording created under subsection (c)(3) 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 (m)(4), the recording must be retained for at least [10] years.

(l) Before a notary public performs the notary public's initial notarial act under this section, the notary public must notify the [commissioning officer or agency] that the notary public will be performing notarial acts with respect to remotely located individuals and identify the technologies the notary public intends to use. If the [commissioning officer or agency] has established standards under subsection (m) and Section 27 for approval of communication technology or identity proofing, the communication technology and identity proofing must conform to the standards.

(m) In addition to adopting rules under Section 27, the [commissioning officer or agency] may adopt rules regarding performance of a notarial act under this section. The rules may:

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

(2) establish standards for communication technology and identity proofing;

(3) establish requirements or procedures to approve providers of communication technology and the process of identity proofing; [and]

(4) establish standards and a period for the retention of an audio-visual recording under subsection (c)(3); and

(5) prescribe methods for a notary public to confirm under subsections (d) and (e) the identity of a tangible record].

(n) Before adopting, amending, or repealing a rule governing performance of a notarial act with respect to a remotely located individual, the [commissioning officer or agency] must consider:

(1) the most recent standards regarding the performance of a notarial act with respect to a remotely located individual promulgated by national standard-setting organizations and the recommendations of the National Association of Secretaries of State;

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

(3) the views of governmental officials and entities and other interested persons.

[(o) By allowing its communication technology or identity proofing to facilitate a notarial act for a remotely located individual or by providing storage of the audio-visual recording under subsection (c)(3), the provider of the communication technology, identity proofing, or storage appoints the [commissioning officer or agency] as the provider's agent for service of process in any civil action in this state related to the notarial act.]

Legislative Note: *The optional provisions of subsections (d) through (h) are intended for a state that seeks greater specificity in application of the section. Subsections (e), (f), (g), and (m)(5) should be enacted only together and not individually.*

Subsection (o) is an optional subsection. This optional subsection may be adopted by a state if it wishes to provide greater assurance that should a person located in the adopting state be injured by the actions of a remote service provider that person will be able to obtain jurisdiction over the provider in the adopting state.

Comment

This section authorizes a notary public to perform notarial acts in the state in which he or she is commissioned on behalf of an individual who is not physically present before the notary

public. That remote individual may be located elsewhere in the state in which the notary is located, elsewhere in the United States, or outside the United States.

This section requires that a notary public perform the notarial act in the state in which the notary is commissioned or in another state in which the notary is authorized to act.

Subsection (a):

“Communication technology.” Subsection (b) authorizes a remotely located individual to appear before a notary public by means of communication technology. Subsection (a)(1) defines the method of electronic communication by which the notary public and the remote individual must communicate. Subsection (a)(1)(A) provides that the technology must afford synchronous communication between the notary public and the remotely located individual; asynchronous communication is not permitted.

The technology must consist of both audio and video components. The notary public and the remotely located individual must be able to see and hear each other interactively in real time. This will provide a notary public an opportunity to assess the competency of the remotely located individual and evaluate whether the individual’s acts are knowingly and voluntarily made.

Over time communication technology will change. Currently a number of communication systems exist. However, it is recognized that these systems will be updated and that other processes will make their appearance and that other providers will enter the communication technology community. Consequently, communication technology is not limited to a specific protocol or technology. The regulation and approval of communication technology, any changes to it, and their providers resides with the commissioning officer or agency pursuant to subsection (m)(2).

Subsection (a)(1)(B) recognizes that some individuals may have a vision, hearing or speech impairment and may not be able to communicate by sight or sound in the same way as a person who does not have such an impairment. Consequently, this subsection allows for an accommodation that will facilitate communication by and with the person with the impairment. For example, the accommodation might allow for a visual transcription of the other party’s spoken words.

This subsection does not itself state when such an accommodation is required or how it will be implemented. That determination is based on other applicable law at either the federal or state level. Further, the commissioning officer or agency may adopt rules regarding the provision of accommodations to persons with a vision, hearing or speech impairment pursuant to subsections (m)(1) and (m)(2).

“Foreign state.” Subsection (a)(2) defines a foreign state as a foreign country and not the United States, a state in the United States federal system, a federally recognized Indian tribe, or any other location subject to the jurisdiction of the United States.

“Identity proofing.” Subsection (c)(1)(C) authorizes the use of identity proofing to verify the identity of the remotely located individual. This subsection defines that term.

Identity proofing is a service or process that is provided by a third person. The verification is performed by comparing and reviewing data from public or private data sources with information from or provided by the remotely located individual.

The precise methodologies for identity proofing will change over time and this subsection recognizes that fact. Currently, some frequently used technologies involve asking the remotely located individual a number of personal questions, the verification of which can be ascertained from public or private data sources (which is generally referred to as “knowledge-based authentication”), or the remote analysis of the characteristics and security features of identity cards (which is generally referred to as “credential analysis”). Correct answers to identity proofing questions or the analysis of identity cards provide a reasonable degree of certainty regarding the identity of a remotely located individual that is comparable to or better than what occurs in face-to-face notarization. However, the methodologies are not limited to that process. Other methodologies currently exist or may develop. They include, for example, secure password identification, biometric identification, or possession or use of a digital identification certificate.

The regulation and approval of identity-proofing, any changes to it, and its providers resides with the [commissioning officer or agency] pursuant to subsections (m)(2) and (m)(3). Some states may prefer a simple mandate to use reasonably reliable methods of identity proofing subject to compliance actions for failure to do so; others may prefer to adopt standards for communication technologies. Still other states may elect to require the pre-approval of all technologies that are used in identity proofing.

“Outside the United States.” In accordance with subsection (c)(4) a notary public may perform a notarial act on behalf of a remotely located individual who is “located outside the United States.” This subsection defines the venues that are located outside the United States as those located 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.

“Remotely located individual.” The provisions of this Section apply only to a notarial act performed by a notary public for a remotely located individual. This subsection defines a remotely located individual as a person who is not in the physical presence of the notary public performing the notarial act. The performance of a notarial act on behalf of an individual who is in the physical presence of the notary public must comply with provisions specified elsewhere in this act.

The remotely located individual may be located in the state in which the notary public is commissioned or elsewhere in the United States. The remotely located individual also may be located outside the United States although, in that case, the requirements specified in subsection (c)(4) apply.

Subsection (b): Section 6 states that an individual for whom a notary public performs a notarial act must appear personally before the notary public. This subsection states that an individual appearing before a notary public by means of communication technology complies with the requirements of that section. In effect, this provision provides a new definition for the personal appearance requirement for a remotely located individual appearing before a notary public by means of communication technology in accordance with this section.

Subsection (c): This subsection sets out specific requirements for the performance of a notarial act on behalf of a remotely located individual.

Subsection (c)(1) states three methods by which a notary public may identify a remotely located individual. Subsection (c)(1)(A) allows the notary public to identify the remotely located individual by personal knowledge as provided in Section 7(a). Thus, a notary public may identify the remotely located individual if the notary public has had prior dealings with the remotely located individual and is able to identify that individual with a reasonable certainty.

Subsection (c)(1)(B) allows a notary public to identify the remotely located individual by means of an oath or affirmation from a credible witness. That witness may be located in the physical presence of the notary public and able to be identified by the notary public in accordance with Section 7(b)(2). Alternatively, the witness may be remotely located and appear before the notary public by means of communication technology, in which case the witness must be able to be identified by the notary public by identity proofing in accordance with the provisions of this Section.

Subsection (c)(1)(C) provides that reasonable identification of a remotely located individual requires the application of at least two different types of identity-proofing processes or services. Thus, for example, an individual may be identified by two of the following technologies: (1) knowledge-based authentication; (2) credential analysis; and (3) biometric identification technology. This subsection does not evaluate or specify which processes or services are to be used. It also permits other identity proofing technologies to be used as they become available and reliable. This act does not mandate that one of the methods of identity proofing utilized must be credential analysis because such an approach would freeze into law technology specific requirements. Subsections (m)(2) and (m)(3) authorize the commissioning officer or agency to establish standards for identity proofing and to establish requirements and procedures to approve providers of identity proofing.

Subsection (c)(2) requires that the notary public be reasonably able to identify the record before the notary public as the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature.

Thus, for example, a notary public might verify the record by means of a secure electronic signature tied to the tamper-evident electronic record which the notary public is notarizing.

Subsection (c)(3) requires that an audio-visual recording of the performance of the notarial act be created. Being able to witness the sight and sound of the conversation between a notary public and a remotely located individual provides substantial evidence as to the validity of

the performance of a notarial act as well as evidence as to compliance with the requirements of this Section. The recording may be created either by the notary public or by a person acting on behalf of the notary public. The period for retention of the recording is specified in subsection (k).

Subsection (c)(4) specifies the requirements for the performance of a notarial act for an individual who is located outside the United States.

Subsection (c)(4)(A) provides that the record with regard to which a notarial act is to be performed on behalf of an individual who is located outside the United States must satisfy either of two requirements:

(i) The record may be part of or pertain to a matter that is to be filed with or relates to a matter before a court, governmental entity, or other entity subject to the jurisdiction of the United States. This may be a judicial proceeding (e.g. a lawsuit in which the record will be submitted), a matter before an administrative agency (e.g. a matter before a federal or state regulatory board), or a matter that is before another governmental or non-governmental entity (e.g. a record that will be submitted to a corporate entity). In any case, the court, agency, or other entity must be located in the territorial jurisdiction of the United States, although the location of the court, agency, or other entity need not be in the same state in which the notary public is performing the notarial act.

(ii) The record may involve property located in the territorial jurisdiction of the United States, or it may involve a transaction that is substantially connected with the United States. The property described in the first clause may be either real or personal property. It need not be located in the same state in which the notary public is performing the notarial act. Thus, for example, the matter may involve an acknowledgement on a deed that is transferring real property located anywhere in the United States, or it may involve an affidavit filed with regard to a transfer of a decedent's personal property located anywhere in the United States.

Subsection (c)(4)(B) provides that the act of making the statement or signing the record must not be prohibited by the foreign country in which the remotely located individual is located. Under this Section the notarial act is performed in the state in which the notary public is located at the time of the performance of the notarial act. If the act is performed on behalf of an individual located in a foreign country, that nation nevertheless might seek to impose a penalty on the remotely located individual, the notary public, or both for performing the notarial act. Thus, this subsection states that, in order for the notarial act to be permitted under this Section, the act of making the statement or signing the record must not be prohibited in the foreign country in which the remotely located individual is situated.

It is hoped that the United States Department of State will be able to provide a listing of foreign countries that would seek to impose a penalty in the case of a remote notarization. If provided, that listing should be consulted by the notary public and the individual located outside the United States before attempting to perform the notarial act.

This subsection is not intended to impose a requirement upon a notary public to translate, understand, or interpret the laws of foreign countries. Instead, it is intended to respect the sovereignty of other nations and to alert international users of remote notarial services that they may be exposed to sanctions under the laws of other countries.

Preamble to Subsections (d), (e), (f), and (g): With the advent of the Covid-19 pandemic in 2020, would-be users of notarial services were often unable to visit a notary public. Lockdowns and social distancing requirements prevented or made difficult traditional in-person meetings between notaries and their clients. However, the 2018 amendments to Section 14A permitting remote notarization provided notaries with the ability to provide notarial services by means of communication technology.

Nevertheless, some issues, not anticipated at the time of the 2018 amendments, presented themselves and needed resolution. One issue was whether and by what process a notary is able to take an acknowledgement by means of communication technology from a remotely located individual regarding a tangible record that is in the possession to the notary. Another issue was whether and by what process a notary is able to perform a notarial act by means of communications technology for a remotely located individual regarding a tangible record that, at the time of the performance of the notarial act, is still in the possession of the individual. Finally, the 2018 amendments did not specifically provide that a notary was able to administer an oath or affirmation remotely via communication technology.

Although the pandemic may have brought these issues into focus, their occurrence is not limited to pandemic scenarios. Subsections (d), (e), (f), (g), and (h) were adopted to resolve these issues and to clarify the processes by which these remote notarial acts may be performed.

Subsection (d): A remotely located individual may request a notary public to take an acknowledgement of the individual's signature on a tangible record that the individual has sent to the notary. During the recent pandemic this scenario might have arisen if an individual was unable to appear physically before a notary due to a lockdown or social distancing requirements and sent the record to a notary in anticipation of acknowledging it via communication technology.

Although taking an acknowledgement on a tangible record in a notary's presence by communication technology is reasonably implied in subsection (c)(2), the authority and process by which it is to be performed needed clarification. Accordingly, subsection (d) affirms the authority of the notary to use communication technology to take the acknowledgement from the remotely located individual. It further specifies that during the audio-visual session required by subsection (c)(3), the tangible record physically present before the notary must be displayed to the remotely located individual and the remotely located individual must identify the record. That display and identification must be captured in the audio-visual recording required by subsection (c)(3).

Subsection (e): The situation that the next three subsections address is, in some ways, the converse of that addressed in subsection (d). Subsection (d) concerns a tangible record that *is physically present* before a notary public at the time a remotely located individual acknowledges

the individual's signature on it. Subsection (e) concerns a tangible record that is still in the possession of a remotely located individual and *is not physically present* before a notary at the time the notary performs a notarial act with regard to it.

In the recent pandemic, this situation might have arisen if a hospitalized individual needed a notary to witness the signing of an affidavit or certain estate planning documents; the individual would have been unable to leave the hospital to meet with a notary and a notary would have been unable to visit the hospital. Or it might have arisen simply because an individual signing a tangible record was unable to be physically present before a notary due to a lockdown or remote distancing requirements. Even after the pandemic, remotely located individuals will likely continue to desire to have their signatures on tangible records witnessed and notarized remotely.

If a notary witnesses a remotely located individual signing a tangible record by means of communication technology, it is clearly not possible that the tangible record would be physically present before the notary. Subsection (c)(2) requires that the notary be able reasonably to confirm that the record to which the notary subsequently attaches a notarial certificate is the same record that the notary witnessed the remotely located individual sign. Thus, some procedure is necessary to allow the notary to confirm, after receipt of the record from the individual, that the record and signature are the same as those witnessed remotely by the notary.

If the requirements of subsection (e) are met, it permits a notarial act to be performed with regard to a tangible record that is not physically present before the notary at the time it is signed. However, in order to assure with a high degree of certainty that the tangible record signed by the remotely located individual is the same record to which the notary attaches a notarial certificate after the tangible record is received by the notary, the subsection sets out a number of requirements. Subsection (e) provides that a notary is able to confirm that the requirements of subsection (c)(2) are met.

Subsection (e)(1) imposes two requirements on the remotely located individual:

Subsection (e)(1)(A) provides that, during the audio-visual recording required by subsection (c)(3), the remotely located individual must sign the tangible record as well as a declaration stating that the record is the same record on which the notary performed the notarial act by communication technology. The witnessing by the notary of the remotely located individual signing the record and declaration provide a reasonable confirmation to the notary that a record was executed by the remotely located individual.

If a remotely located individual is physically unable to sign the record or the declaration, Section 9 authorizes another individual at the direction of the remotely located individual to sign the name of the remotely located individual.

Subsection (e)(1)(B) provides that the remotely located individual must send the executed tangible record and declaration to the notary within three days after the performance of the notarial act. A reasonably short time limit on submitting the record and declaration to the notary is necessary in order to help maintain its validity as well as prevent the lapse of too long a period

of time between the performance of the notarial act and the attachment of the notarial certificate. Selection of any specific time period is, in a way, arbitrary, but it is believed that a three-day period is a realistic compromise allowing a reasonable time for the individual to send the record and declaration to the notary.

It should be noted that the requirement is that the record and declaration be sent to the notary within three days; it need not necessarily be received by the notary within the three-day period. The individual may use any normal means to send the record and declaration to the notary, including the U.S. Postal Service, a package or document delivery service, or personal delivery.

Subsection (e)(2) imposes two additional requirements on the notary:

Subsection (e)(2)(A) provides that the notary must record the remotely located individual signing the record and declaration as part of the audio-visual recording required under subsection (c)(3). This recording, which must be retained for a period of at least ten years under subsection (k), provides a reviewable record of the administration of the notarial act. It also provides added assurance that the record signed by the individual and the record to which the notarial certificate will be attached are one and the same.

Subsection (e)(2)(B) provides that, after receipt of the record and declaration from the remotely located individual, the notary must execute and attach the certificate of notarial act required by Section 15. That certificate must include a statement clearly indicating that the notary witnessed the signing of the record and declaration by means of communication technology and performed the notarial act by means of communication technology. This statement provides notice to a reader of the certificate as to the method of the performance of the notarial act.

Subsection (f): This subsection provides that a notarial act performed in compliance with subsection (e) will be considered to be effective on the date that the remotely located individual signed the declaration required by subsection (e)(1)(A)(ii). This provision makes clear that the notarial act was performed at the time that the remotely located individual signed the declaration and not at the later date when the certificate of notarial act is attached to the record. Inter alia, this assures that should the remotely located individual die or become incapacitated prior to the notary's receipt of the record and declaration and the notary's attachment of the notarial certificate, the notarial act was nevertheless performed and valid.

The subsection further provides that a notarial act performed in compliance with subsection (e) will be considered to meet the requirements of Section 15(a)(1), which normally requires that the certificate of notarial act be executed contemporaneously with the performance of the notarial act.

Subsection (g): As noted above, the procedures specified in subsection (e) provide an avenue by which a notary public may establish that the notary was reasonably able to confirm, as required by subsection (c)(2), that the record before the notary is the same record that the remotely located individual executed. Subsection (g) recognizes that subsection (e) does not set

forth the only procedure by which that confirmation may be obtained. Other procedures may exist or be devised that also comply with subsection (c)(2). However, compliance with subsection (e) provides the notary with a safe harbor to satisfy this requirement.

Subsection (h): Although Section 1(5) recognizes that administering an oath or affirmation is a notarial act, the 2018 amendments to Section 14A did not specifically recognize the ability of a notary public to administer an oath or affirmation to a remotely located individual by means of communication technology. Subsection (h) specifically authorizes a notary public to administer an oath or affirmation by means of communication technology and sets out certain requirements for its performance.

To administer the oath or affirmation remotely, subsection (h)(1) provides that the notary must identify the remotely located individual as required in subsection (c)(1). Subsection (h)(2) provides that the notary must create an audio-visual recording of the remotely located individual while the oath or affirmation is administered in accordance with subsection (c)(3). Finally, subsection (h)(3) provides that the notary must retain or cause the retention of that recording in accordance with subsection (k).

Subsection (h) also recognizes that other state law or regulation may already establish other requirements for the remote administration of an oath or administration. If this subsection is in conflict, the other state law or regulation continues to regulate the remote administration of an oath or affirmation.

Subsection (i): This subsection provides that the certificate of notarial act must, in addition to the requirements imposed by Section 15, indicate that the notarial act was performed by communication technology. This notation on the certificate is, in effect, a notice to interested parties that the notarial act was performed for a remotely located individual by means of communication technology.

Subsection (j): This subsection states that a short-form certificate set out in Section 16 is sufficient to comply with subsection (i) in either of the following:

(i) The certificate complies with any requirements adopted under subsection (m)(1) by the commissioning officer or agency, or

(ii) The certificate is in the form of a certificate set out in Section 16 and contains a additional statement providing substantially as follows: “This notarial act involved the use of communication technology.”

Subsection (k): This subsection requires that a notary public; a guardian, conservator, or agent of the notary public; or a personal representative of a deceased notary public must retain the audio-visual recording created under subsection (c)(3). Alternatively, the recording may be retained by a repository on behalf of a person required to retain the recording. The suggested period for retention of the recording is ten years, although this may be varied by the legislature at the time of enactment. Furthermore, the commissioning officer or agency may require a different

period by rule pursuant to its powers under subsection (m)(4) and may vary retention period for different types of documents.

Subsection (l): Prior to performing his or her first notarial act under this Section, a notary public must notify the commissioning officer or agency that the notary public will be performing notarial acts for remotely located individuals by means of communication technology. The notary public must identify all of the technologies that she or he will be using to provide the notarial service. In this regard, the term “technologies” is broader than merely communication technology. It includes not only communication technology but also, for example, any technology used to perform identity proofing.

The commissioning officer or agency may have established standards for the approval of communication technology under subsection (m)(2) and Section 27. If so, the communication technology must conform to those standards. If the communication technology does so conform, the commissioning officer or agency will then approve the technology. If the commissioning officer or agency has not established standards, the notification provided to the commissioning officer or agency containing the required information suffices to comply with this subsection.

Subsection (m): This subsection authorizes the commissioning officer or agency to adopt rules regarding the performance of a notarial act by communication technology for a remotely located individual. Adopting such rules will be of particular importance since the provisions of this Section are a significant revision of prior notarial practice.

Specifically listed in the subsection is the authority to adopt rules regarding: (1) the means of performing a notarial act involving a remotely located individual using communication technology; (2) standards for communication technology and identity proofing; (3) requirements or procedures to approve providers of communication technology and the process of identity proofing; (4) standards and the period for the retention of an audio-visual recording created under subsection (c)(3); and (5) methods for a notary public to confirm the identity of a tangible record under subsections (d) and (e).

Further authority for the adoption of rules regarding the performance of a notarial act for a remotely located individual are provided in Section 27.

Subsection (n): This subsection directs that the commissioning officer or agency must consider certain factors before adopting, amending, or repealing a rule governing the performance of a notarial act with respect to a remotely located individual. Specifically listed are: (1) the most recent standards regarding the performance of a notarial act with respect to a remotely located individual promulgated by national standard-setting organization and particularly by the National Association of Secretaries of State; (2) standards, practices, and customs of other jurisdictions that have laws substantially similar to this Section; and (3) the views of governmental officials and entities and other interested persons.

Subsection (o): This subsection provides that a supplier of communication or identity proofing technology or a provider of storage for the audio-visual recording appoints the commissioning officer or agency as the supplier’s or provider’s agent for service of process in a

civil action relating to the notarial act. Since the subsection only applies to civil actions “in this state related to the notarial act,” only claims arising out of notarial acts performed in the state are subject to its provisions.

SECTION 32. REPEALS. The following are repealed:

- (1) [The Uniform Acknowledgment Act (As Amended)].
- (2) [The Uniform Recognition of Acknowledgments Act].
- (3) [The Uniform Law on Notarial Acts].

Legislative Note: *The Revised Uniform Law on Notarial Acts was approved by the National Conference of Commissioners on Uniform State Laws in 2010. In 2016, the Conference approved an amendment to the Act, which added Section 14A. It allowed a notary public in an adopting state to perform a notarial act on behalf of an individual located outside the United States. That Section was an optional Section.*

In 2018, the Conference approved an amendment to the Act, which withdrew the then-existing Section 14A and substituted a new Section 14A. It allows a notary public in an adopting state to perform a notarial act on behalf of a remotely located individual regardless of where that individual is located. The 2018 amendment also included additional subsections 4(c) and 20(c); they authorize a notarial officer to certify that a tangible copy of an electronic record is an accurate copy and the recorder to accept that copy for recording.

In 2021, the Conference approved an amendment to the Act, which revised and added optional subsections (d) through (h) and (m)(5) to Section 14A regarding the performance of certain notarial acts for a remotely located individual).

The Act with its 2018 and 2021 amendments is now referenced as the Revised Uniform Law on Notarial Acts (2021).

In order to maintain uniformity with the current version of the Revised Uniform Law on Notarial Acts (2021), if a state has adopted the 2010 act, it should amend its current law by adopting the 2018 amendments. If it also has adopted the 2016 amendment, it should repeal that provision from its current law and adopt the 2018 amendments. It also may adopt the optional subsections to Section 14A approved in 2021.