

Assembly Bill 6

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CHAPTER 14, LAWS OF 1969

AN ACT to create 235.185 of the statutes, relating to the uniform recognition of acknowledgments act.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

PREFATORY NOTE: *Reasons for Act.* Since its first uniform acknowledgment act in 1892, the national conference of commissioners on uniform state laws has promulgated, amended and revised acts in 1914, 1939, 1942, 1949 and in 1960. Each of these acts had a multiple purpose: to establish a simplified and certain form for taking acknowledgments both within and without the state; and to specify how acknowledgments and other notarial acts taken out of the state could be taken so as to be recognized in the enacting state. Each amendment or revision has been made necessary and desirable by technological

changes (e.g., use of facsimile signatures); by the mobility of the American population (e.g., acknowledgment without the United States) and by changes in titles of officers, other than notaries public, who are authorized to take acknowledgments in various parts of the United States and the world.

Impetus for the present act has come from the U.S. secretary of state. He advised the conference that existing acts are out of date in listing the titles of officers of the foreign service who may take acknowledgments. Thus, the act refers to taking an acknowledgment before a "secretary of a legation" but not before a "secretary of an embassy" and currently the United States has only two legations in the world and in every other country the United States has an embassy. In the course of examining both state law and federal law on the subject, other instances of federal personnel operating in other states and throughout the world who have acknowledgment powers came to the conference's attention. Thus, the coast and geodetic survey and weather service have vessels stationed outside the jurisdiction of the United States and the personnel of this service have need for notarial services while on active duty. Wardens of federal prisons have been authorized to take acknowledgments for inmates of these institutions, but many of these titles are not found in the acknowledgment acts of the various states and, therefore, may not be recognized in the state where it is desired that the notarial act be used.

Rather than preparing another "minor amendment" which wastes time of state legislatures, the conference proposed in this act that there be a major independent act concerning recognition in the enacting state of acknowledgments and other notarial acts performed elsewhere for use in the enacting state. The present draft proposes to describe, in sufficiently general terminology, the persons whose notarial act will be recognized in the enacting state that new designations of officers will not require additional amendments. Thus, instead of listing a series of special titles such as "ambassadors, ministers, charges d'affaires, consul general, etc." which may take acknowledgments and which titles may change as tables of organization of the secretary of state change, this draft refers only to an "officer of the foreign service" and other persons designated by regulation of the foreign service to perform notarial acts.

This act does not require amendment of existing acknowledgment laws. This act deals only with "recognition of notarial acts" and it is a recognition statute "in addition to any other recognition statute now in effect in the state".

The act lists the officers whose performance of notarial acts outside this state will be recognized in this state; it prescribes where authentication of the power of the officer is necessary for recognition of the acknowledgment; it states what the officer performing the notarial act shall certify; and it states what certificates used by the officer taking the acknowledgment will be recognized. The act also prescribes a short form of acknowledgment which will be recognized if used. The short form does not prohibit the use of any other form. *Need for Uniformity.* The major need for uniformity is the need of notaries and persons outside the enacting state who have been asked to notarize a document for use in the enacting state. Currently, the personnel regulations for the foreign service of the United States have more than 10 pages of instructions to consuls and others admonishing them that if the acknowledgment is to be used in state X only a vice-consul may take the acknowledgment, but if it is to be used in state Y either a consul or a consul general may take an acknowledgment. The other major use outside the enacting state is by personnel of the

U.S. armed forces who are asked by persons connected with the armed forces installation to perform a notarial act for use elsewhere.

A uniform act on the subject of recognition of acknowledgments is becoming increasingly more imperative as more and more U.S. citizens are employed by the federal government and American industry away from their state of origin or property management. The federal government has designated various officials to serve their employes and others by authorizing them to take acknowledgments. This service can be performed efficiently and certainly only if the federal official has a simple method of taking an acknowledgment which is uniformly effective in any state. For Wisconsin to enact this act will substantially help its citizens and residents to conduct affairs having significance in Wisconsin wherever they happen to be outside Wisconsin at the time the notarial act is performed.

In this act there is no attempt to say what instruments shall be acknowledged or when proof of execution of an instrument is required. All that this act does is to provide that whenever Wisconsin law requires an act of acknowledgment to be performed and whenever it authorizes a notary public in Wisconsin to perform the act, then the officers designated in the act may perform the act and it will be recognized in this state.

235.185 of the statutes is created to read:

235.185 UNIFORM RECOGNITION OF ACKNOWLEDGMENTS ACT.

(1) RECOGNITION OF NOTARIAL ACTS PERFORMED OUTSIDE THIS STATE. For the purposes of this section, "notarial acts" means acts which the laws and regulations of this state authorize notaries public of this state to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments and attesting documents. Notarial acts may be performed outside this state for use in this state with the same effect as if performed by a notary public of this state by the following persons authorized pursuant to the laws and regulations of other governments in addition to any other person authorized by the laws and regulations of this state:

(a) A notary public authorized to perform notarial acts in the place in which the act is performed;

(b) A judge, clerk or deputy clerk of any court of record in the place in which the notarial act is performed;

(c) An officer of the foreign service of the United States, a consular agent or any other person authorized by regulation of the United States department of state to perform notarial acts in the place in which the act is performed;

(d) A commissioned officer in active service with the armed forces of the United States and any other person authorized by regulation of the armed forces to perform notarial acts if the notarial act is performed for one of the following or his dependents: a merchant seaman of the United States, a member of the armed forces of the United States or any other person serving with or accompanying the armed forces of the United States; or

(e) Any other person authorized to perform notarial acts in the place in which the act is performed.

(2) AUTHENTICATION OF AUTHORITY OF OFFICER. (a) If the notarial act is performed by any of the persons described in Sub. (1) (a) to (d), other than a person authorized to perform notarial acts by the laws or regulations of a foreign country, the signature, the rank or title and the serial number, if any, of the person are sufficient proof of the authority of a holder of that rank or title to perform the act. Further proof of his authority is not required.

(b) If the notarial act is performed by a person authorized by the laws or regulations of a foreign country to perform the act, there is sufficient proof of the authority of that person to act if:

1. Either a foreign service officer of the United States resident in the country in which the act is performed or a diplomatic or consular officer of the foreign country resident in the United States certifies that a person holding that office is authorized to perform the act;
2. The official seal of the person performing the notarial act is affixed to the document; or
3. The title and indication of authority to perform notarial acts of the person appears either in a digest of foreign law or in a list customarily used as a source of such information.

(c) If the notarial act is performed by a person other than one described in pars. (a) and (b), there is sufficient proof of the authority of that person to act if the clerk of a court of record in the place in which the notarial act is performed certifies to the official character of that person and to his authority to perform the notarial act.

(d) The signature and title of the person performing the act are prima facie evidence that he is a person with the designated title and that the signature is genuine.

(3) **CERTIFICATE OF PERSON TAKING ACKNOWLEDGMENT.** The person taking an acknowledgment shall certify that:

- (a) The person acknowledging appeared before him and acknowledged he executed the instrument; and
- (b) The person acknowledging was known to the person taking the acknowledgment or that the person taking the acknowledgment had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument.

(4) **RECOGNITION OF CERTIFICATE OF ACKNOWLEDGMENT.** The form of a certificate of acknowledgment used by a person whose authority is recognized under sub. (1) shall be accepted in this state if:

- (a) The certificate is in a form prescribed by the laws or regulations of this state;
- (b) The certificate is in a form prescribed by the laws or regulations applicable in the place in which the acknowledgment is taken; or
- (c) The certificate contains the words "acknowledged before me", or their substantial equivalent.

(5) **CERTIFICATE OF ACKNOWLEDGMENT.** The words "acknowledged before me" mean:

- (a) That the person acknowledging appeared before the person taking the acknowledgment;
- (b) That he acknowledged he executed the instrument;
- (c) That, in the case of:

1. A natural person, he executed the instrument for the purposes therein stated;
2. A corporation, the officer or agent acknowledged he held the position or title set forth in the instrument and certificate, he signed the instrument on behalf of the corporation by proper authority, and the instrument was the act of the corporation for the purpose therein stated;
3. A partnership, the partner or agent acknowledged he signed the instrument on behalf of the partnership by proper authority and he executed the instrument as the act of the partnership for the purposes therein stated;
4. A person acknowledging as principal by an attorney in fact, he executed the instrument by proper authority as the act of the principal for the purposes therein stated;
5. A person acknowledging as a public officer, trustee, administrator, guardian or other representative, he signed the instrument by proper au-

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thority and he executed the instrument in the capacity and for the purposes therein stated; and

(d) That the person taking the acknowledgment either knew or had satisfactory evidence that the person acknowledging was the person named in the instrument or certificate.

(6) **SHORT FORMS OF ACKNOWLEDGMENT.** The forms of acknowledgment set forth in this subsection may be used and are sufficient for their respective purposes under any law of this state. The forms shall be known as "statutory short forms of acknowledgment" and may be referred to by that name. The authorization of the forms in this subsection does not preclude the use of other forms.

(a) For an individual acting in his own right:

State of
County of

The foregoing instrument was acknowledged before me this (date) by (name of person acknowledged.)

(signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

(b) For a corporation:

State of
County of

The foregoing instrument was acknowledged before me this (date) by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging) a (state or place of incorporation) corporation, on behalf of the corporation.

(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

(c) For a partnership:

State of
County of

The foregoing instrument was acknowledged before me this (date) by (name of acknowledging partner or agent), partner (or agent) on behalf of (name of partnership), a partnership.

(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

(d) For an individual acting as principal by an attorney in fact:

State of
County of

The foregoing instrument was acknowledged before me this (date) by (name of attorney in fact) as attorney in fact on behalf of (name of principal).

(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

(e) By any public officer, trustee or personal representative:

State of
County of

The foregoing instrument was acknowledged before me this (date) by (name and title of position).

(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

(7) **ACKNOWLEDGMENTS NOT AFFECTED BY THIS SECTION.** A notarial act performed prior to the effective date of this section (1969) is not affected by this section. This section provides an additional method of proving

notarial acts. Nothing in this section diminishes or invalidates the recognition accorded to notarial acts by other laws or regulations of this state.

(8) UNIFORMITE OF INTERPRETATION. This section shall be so interpreted as to make uniform the laws of those states which enact it.

(9) SHORT TITLE. This section may be cited as the uniform recognition of acknowledgments act.

NOTE: Subsection (1) refers to persons whose title is created by the laws of another place whose notarial act is directed to be recognized in this state. Under federal laws there are several classes of persons who now fall within sub. (1) (c), (d) and (e). As an example, the following are authorized to take acknowledgments: 1. Wardens, clerks and parole officers of federal penal and correctional institutions for employes and inmates, 18 U.S.C. s. 4004. 2. Commissioned and warrant officers of the Coast Guard, 14 U.S.C. s. 636. 3. United States commissioners, 5 U.S.C. s. 92, 28 U.S.C. s. 637. 4. Commanding officers of coast and geodetic survey vessels not in the jurisdiction of the United States, 33 U.S.C. s. 875. 5. Foreign service officers of the United States, 22 U.S.C. s. 1203 and C.F.R. Tit. 22, s. 92.2.

Subsection (2) (a) is a change from existing law in some states. Practically all states provide that if the notarial act is performed by an officer of the United States, the signature of the officer and a statement of his rank is sufficient proof of the authority of the holder of the office to perform the notarial act. Subsection (2) (a) also provides that no authentication is necessary of the power of an officer designated by the laws of a state in the United States. Thus, a notary of another state may, by signing his name and his title and his number, if any, establish his proof of authority of a notary to perform the notarial act.

Subsection (2) (b) requires authentication if the notarial act is performed by a person authorized by the laws of a foreign country to perform the act. Two methods of authentication are made. Authentication may be made by a certificate by a foreign service officer of the United States resident in the foreign country or a certificate by a diplomatic officer of the foreign country resident in the United States that a person holding the office is authorized to perform the notarial act or authentication may be made by affixing an official seal of the officer.

In some states, title companies, banks and law digests maintain lists of officials authorized to perform notarial acts. Subsection (2) (b) 3 gives official recognition to this practice as an alternative method of proof of authority.

Subsection (2) (c) is a "catch-all" to cover authentication where the person taking the acknowledgment does not fall within the categories covered by sub. (2) (a) and (b).

Subsection (2) (d) distinguishes proof of the authority of the holder of the office from proof of the genuineness of the signature and the genuineness of the claim that the person is an officer.

Approved April 28, 1969.
