

As Amended by House Committee

Session of 2020

HOUSE BILL No. 2713

By Committee on Judiciary

2-14

Proposed Amendments to
House Bill No. 2713
Senate Committee on Judiciary
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Office of Revisor of Statutes

concerning notarial acts;

validating certain notarial
acts performed while the
requirements that a person
must appear before a notary
public are suspended;

1 AN ACT enacting the revised uniform law on notarial acts; amending
2 K.S.A. 16-1611, 58-2209 and 58-2211 and K.S.A. 2019 Supp. **25-3602**,
3 **25-3902**, **25-3902a**, **25-3904**, **25-3904a**, 49-512, **58-652** and 58-4403
4 and repealing the existing sections; also repealing K.S.A. 53-101, 53-
5 102, 53-103, 53-104, 53-105, 53-105a, 53-106, 53-107, 53-109, 53-
6 113, 53-114, 53-115, 53-116, 53-117, 53-118, 53-119, 53-120, 53-121,
7 53-501, 53-502, 53-503, 53-504, 53-505, 53-506, 53-507, 53-508, 53-
8 509, 53-510 and 53-511.
9

10 *Be it enacted by the Legislature of the State of Kansas:*

11 New Section 1. (a) Sections 1 through 31, and amendments thereto,
12 shall be known and may be cited as the revised uniform law on notarial
13 acts.

14 (b) This section shall take effect on and after January 1, 2022.

15 New Sec. 2. As used in the revised uniform law on notarial acts:

16 (a) "Acknowledgment" means a declaration by an individual before a
17 notarial officer that the individual has signed a record for the purpose
18 stated in the record and, if the record is signed in a representative capacity,
19 that the individual signed the record with proper authority and signed it as
20 the act of the individual or entity identified in the record.

21 (b) "Electronic" means relating to technology having electrical,
22 digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

23 (c) "Electronic signature" means an electronic symbol, sound or
24 process attached to or logically associated with a record and executed or
25 adopted by an individual with the intent to sign the record.

26 (d) "In a representative capacity" means acting as:

27 (1) An authorized officer, agent, partner, trustee or other
28 representative for a person other than an individual;

29 (2) a public officer, personal representative, guardian or other
30 representative, in the capacity stated in a record;

31 (3) an agent or attorney-in-fact for a principal; or

32 (4) an authorized representative of another in any other capacity.

33 (e) "Notarial act" means an act, whether performed with respect to a
34 tangible or electronic record, that a notarial officer may perform under the
35 law of this state. "Notarial act" includes taking an acknowledgment,
36 administering an oath or affirmation, taking a verification on oath or

1 affirmation, witnessing or attesting a signature, certifying or attesting a
2 copy and noting a protest of a negotiable instrument.

3 (f) "Notarial officer" means a notary public or other individual
4 authorized to perform a notarial act.

5 (g) "Notary public" means an individual commissioned to perform a
6 notarial act by the secretary of state.

7 (h) "Official stamp" means a physical image affixed to or embossed
8 on a tangible record or an electronic image attached to or logically
9 associated with an electronic record.

, including an official notary seal

10 (i) "Person" means an individual, corporation, business trust,
11 statutory trust, estate, trust, partnership, limited liability company,
12 association, joint venture, public corporation, government or governmental
13 subdivision, agency or instrumentality or any other legal or commercial
14 entity.

15 (j) "Record" means information that is inscribed on a tangible
16 medium or that is stored in an electronic or other medium and is
17 retrievable in perceivable form.

18 (k) "Sign" means, with present intent to authenticate or adopt a
19 record, to:

20 (1) Execute or adopt a tangible symbol; or

21 (2) attach to or logically associate with the record an electronic
22 symbol, sound or process.

23 (l) "Signature" means a tangible symbol or an electronic signature
24 that evidences the signing of a record.

25 (m) "Stamping device" means:

26 (1) A physical device capable of affixing to or embossing on a
27 tangible record an official stamp; or

28 (2) an electronic device or process capable of attaching to or logically
29 associating with an electronic record an official stamp.

30 (n) "State" means a state of the United States, the District of
31 Columbia, Puerto Rico, the United States Virgin Islands or any territory or
32 insular possession subject to the jurisdiction of the United States.

33 (o) "Verification on oath or affirmation" means a declaration, made
34 by an individual on oath or affirmation before a notarial officer, that a
35 statement in a record is true.

36 (p) This section shall take effect on and after January 1, 2022.

37 New Sec. 3. (a) This act applies to a notarial act performed on or after
38 January 1, 2022.

39 (b) This section shall take effect on and after January 1, 2022.

40 New Sec. 4. (a) A notarial officer may perform the following notarial
41 acts:

42 (1) Taking an acknowledgment;

43 (2) administering an oath or affirmation;

1 identification card that is current or expired not more than three years
2 before performance of the notarial act; or

3 (B) another form of government identification issued to an individual
4 that is current or expired not more than three years before performance of
5 the notarial act, contains the signature and a photograph of the individual
6 and is satisfactory to the officer; or

7 (2) by a verification on oath or affirmation of a credible witness
8 personally appearing before the officer and known to the officer or whom
9 the officer can identify on the basis of a passport, driver's license or
10 government-issued nondriver identification card that is current or expired
11 not more than three years before performance of the notarial act.

12 (c) A notarial officer may require an individual to provide additional
13 information or identification credentials necessary to assure the officer of
14 the identity of the individual.

15 (d) This section shall take effect on and after January 1, 2022.

16 New Sec. 8. (a) A notarial officer may refuse to perform a notarial act
17 if the officer is not satisfied that the:

18 (1) Individual executing the record is competent or has the capacity to
19 execute the record; or

20 (2) individual's signature is knowingly and voluntarily made.

21 (b) A notarial officer may refuse to perform a notarial act unless
22 refusal is prohibited by the law of this state.

or by federal law

23 (c) This section shall take effect on and after January 1, 2022.

24 New Sec. 9. (a) If an individual is physically unable to sign a record,
25 the individual may direct an individual other than the notarial officer to
26 sign the individual's name on the record. The notarial officer shall insert:

27 "Signature affixed by (name other than the individual) at the direction
28 of (name of individual)" or similar words.

29 (b) This section shall take effect on and after January 1, 2022.

30 New Sec. 10. (a) A notarial act may be performed in this state by:

31 (1) A notary public of this state;

32 (2) a judge, clerk or deputy clerk of any court of this state;

33 (3) a county clerk or deputy county clerk;

34 (4) an election commissioner or assistant election commissioner; or

35 (5) any other person authorized to perform the specific act by the law
36 of this state.

37 (b) The signature and title of an individual performing a notarial act
38 in this state are prima facie evidence that the signature is genuine and that
39 the individual holds the designated title.

40 (c) The signature and title of a notarial officer described in subsection
41 (a)(1), (a)(2), (a)(3) or (a)(4) conclusively establish the authority of the
42 officer to perform the notarial act.

43 (d) This section shall take effect on and after January 1, 2022.

1 New Sec. 11. (a) A notarial act performed in another state has the
2 same effect under the law of this state as if performed by a notarial officer
3 of this state if:

Strike in lines 3 and 4

(1)

4 (1) The act performed in that state is performed by:

(2)

5 (A) A notary public of that state;

6 (B) a judge, clerk or deputy clerk of a court of that state; or

(3)

7 (C) any other individual authorized by the laws of that state to
8 perform the notarial act;

Strike in lines 8-21

9 (2) the laws of the state that has commissioned the notary public
10 require the notary public to be present in that state while performing the
11 notarial act; and

12 (3) in the case of a notarial act where a physical presence requirement
13 between the notary public and the individual is satisfied by the use of
14 audio and video communication technology between the notary public and
15 a remotely located individual, the laws of the state that has commissioned
16 the notary public require the notary public to ascertain the identity of the
17 remotely located individual by:

18 (A) Personal knowledge of the identity of the individual; or

19 (B) obtaining satisfactory evidence of the identity of the remotely
20 located individual by a review of personal information from two different
21 public or private data sources.

22 (b) The signature and title of an individual performing a notarial act
23 in another state are prima facie evidence that the signature is genuine and
24 that the individual holds the designated title.

The signature and title of a notarial officer described in
subsection (a)(1) or (2) conclusively establish the
authority of the officer to perform the notarial act.
(d)

25 (c) This section shall take effect on and after January 1, 2022.

26 New Sec. 12. (a) A notarial act performed under the authority and in
27 the jurisdiction of a federally recognized Indian tribe has the same effect
28 under the law of this state as if performed by a notarial officer of this state,
29 if the act performed in the jurisdiction of the tribe is performed by:

30 (1) A notary public of the tribe;

31 (2) a judge, clerk or deputy clerk of a court of the tribe; or

32 (3) any other individual authorized by the law of the tribe to perform
33 the notarial act.

34 (b) The signature and title of an individual performing a notarial act
35 under the authority of and in the jurisdiction of a federally recognized
36 Indian tribe are prima facie evidence that the signature is genuine and that
37 the individual holds the designated title.

38 (c) The signature and title of a notarial officer described in subsection
39 (a)(1) or (a)(2) conclusively establish the authority of the officer to
40 perform the notarial act.

41 (d) This section shall take effect on and after January 1, 2022.

42 New Sec. 13. (a) A notarial act performed under federal law has the
43 same effect under the law of this state as if performed by a notarial officer

1 (5) "Remotely located individual" means an individual who is not in
2 the physical presence of the notary public who performs a notarial act
3 under subsection (b).

4 (h) This section shall take effect on and after January 1, 2022.

5 New Sec. 16. (a) A notarial act shall be evidenced by a certificate that
6 shall:

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

9 (2) be signed and dated by the notarial officer and, if the notarial
10 officer is a notary public, be signed in the same manner as on file with the
11 secretary of state;

12 (3) identify the jurisdiction in which the notarial act is performed;

13 (4) contain the title of office of the notarial officer; and

14 (5) if the notarial officer is a notary public, indicate the date of
15 expiration, if any, of the officer's commission.

16 (b) If a notarial act regarding a tangible record is performed by a
17 notary public, an official stamp shall be affixed to or embossed on the
18 certificate. If a notarial act is performed regarding a tangible record by a
19 notarial officer other than a notary public and the certificate contains the
20 information specified in subsections (a)(2), (a)(3), (a)(4) and (a)(5), an
21 official stamp may be affixed to or embossed on the certificate. If a
22 notarial act regarding an electronic record is performed by a notarial
23 officer and the certificate contains the information specified in subsections
24 (a)(2), (a)(3), (a)(4) and (a)(5), an official stamp may be attached to or
25 logically associated with the certificate.

26 (c) A certificate of a notarial act is sufficient if it meets the
27 requirements of subsections (a) and (b) and:

28 (1) Is in a short form set forth in section 17, and amendments thereto;

29 (2) is in a form otherwise permitted by the law of this state;

30 (3) is in a form permitted by the law applicable in the jurisdiction in
31 which the notarial act was performed; or

32 (4) sets forth the actions of the notarial officer and the actions are
33 sufficient to meet the requirements of the notarial act as provided in
34 sections 5, 6 and 7, and amendments thereto, or the law of this state.

35 (d) By executing a certificate of a notarial act, a notarial officer
36 certifies that the officer has complied with the requirements and made the
37 determinations specified in sections 4, 5 and 6, and amendments thereto.

38 (e) A notarial officer shall not affix the officer's signature to, or
39 logically associate it with, a certificate until the notarial act has been
40 performed.

41 (f) If a notarial act is performed regarding a tangible record, a
42 certificate shall be part of, or securely attached to, the record. If a notarial
43 act is performed regarding an electronic record, the certificate shall be

and

Strike in line 20

1 affixed to, or logically associated with, the electronic record. If the
2 secretary of state has established standards in rules and regulations
3 adopted pursuant to section 27, and amendments thereto, for attaching,
4 affixing or logically associating the certificate, the process shall conform
5 to the standards.

6 (g) If a notary public willfully neglects or refuses to attach to a
7 notarial certificate the date of expiration of the notary public's commission,
8 as provided in subsection (a)(5), then the notary public is guilty of a class
9 C nonperson misdemeanor.

10 (h) This section shall take effect on and after January 1, 2022.

11 New Sec. 17. The secretary of state shall adopt rules and regulations
12 providing short-form certificates of notarial acts that are sufficient for the
13 purposes indicated if completed with the information required by section
14 16(a) and (b), and amendments thereto.

15 New Sec. 18. (a) The official stamp of a notary public shall include
16 the notary public's name exactly as it appears on the application for
17 commission as a notary public, the words "notary public" and "State of
18 Kansas", and other information required by the secretary of state, and be
19 capable of being copied together with the record to which it is affixed or
20 attached or with which it is logically associated. No notary public shall use
21 such stamp unless an impression thereof has been filed in the office of the
22 secretary of state.

23 (b) This section shall take effect on and after January 1, 2022.

24 New Sec. 19. (a) A notary public is responsible for the security of the
25 notary public's stamping device and shall not allow another individual to
26 use the device to perform a notarial act. On resignation from, or the
27 revocation or expiration of, the notary public's commission, or on the
28 expiration of the date set forth in the stamping device, if any, the notary
29 public shall disable the stamping device by destroying, defacing,
30 damaging, erasing or securing it against use in a manner that renders it
31 unusable. On the death or adjudication of incompetency of a notary public,
32 the notary public's personal representative or guardian or any other person
33 knowingly in possession of the stamping device shall render it unusable by
34 destroying, defacing, damaging, erasing or securing it against use in a
35 manner that renders it unusable.

36 (b) If a notary public's stamping device is lost or stolen, the notary
37 public or the notary public's personal representative or guardian shall
38 promptly notify the secretary of state on discovering that the device is lost
39 or stolen.

40 (c) This section shall take effect on and after January 1, 2022.

41 New Sec. 20. (a) A notary public shall maintain a journal in which the
42 notary public chronicles all notarial acts that the notary public performs.
43 The notary public shall retain the journal for 10 years after the

1 performance of the last notarial act chronicled in the journal.

2 (b) A journal shall be created on a tangible medium or in an
3 electronic format. A notary public shall maintain a journal to chronicle all
4 notarial acts performed regarding electronic records. If the journal is
5 maintained on a tangible medium, it shall be a permanent, bound register
6 with numbered pages. If the journal is maintained in an electronic format,
7 it shall be in a permanent, tamper-evident electronic format complying
8 with the rules and regulations of the secretary of state.

only one

in a tangible medium or one or more
journals in an electronic format

9 (c) An entry in a journal shall be made contemporaneously with
10 performance of the notarial act and contain the following information:

- 11 (1) The date and time of the notarial act;
- 12 (2) a description of the record, if any, and type of notarial act;
- 13 (3) the full name and address of each individual for whom the notarial
14 act is performed;
- 15 (4) if identity of the individual is based on personal knowledge, a
16 statement to that effect;
- 17 (5) if identity of the individual is based on satisfactory evidence, a
18 brief description of the method of identification and the identification
19 credential presented, if any, including the date of issuance and expiration
20 of any identification credential; and
- 21 (6) the fee, if any, charged by the notary public.

22 (d) If a notary public's journal is lost or stolen, the notary public shall
23 promptly notify the secretary of state on discovering that the journal is lost
24 or stolen.

25 (e) On resignation from, or the revocation or suspension of, a notary
26 public's commission, the notary public shall retain the notary public's
27 journal in accordance with subsection (a) and inform the secretary of state
28 where the journal is located.

29 (f) Instead of retaining a journal as provided in subsections (a) and
30 (e), a current or former notary public may transmit the journal to a
31 repository approved by the secretary of state.

32 (g) On the death or adjudication of incompetency of a current or
33 former notary public, the notary public's personal representative or
34 guardian or any other person knowingly in possession of the journal shall:

- 35 (1) Retain the notary public's journal in accordance with subsection
36 (a) or transmit the journal to a repository approved by the secretary of
37 state; and
- 38 (2) inform the secretary of state where the journal is located.

39 (h) This section shall take effect on and after January 1, 2022.

40 New Sec. 21. (a) A notary public may select one or more tamper-
41 evident technologies to perform notarial acts with respect to electronic
42 records. A person shall not require a notary public to perform a notarial act
43 with respect to an electronic record with a technology that the notary

1 the notarial act before the notarial act is performed.

2 (h) Except as otherwise allowed by law, a notary public shall not
3 withhold access to or possession of an original record provided by a
4 person that seeks performance of a notarial act by the notary public.

5 (i) Violation of subsections (f) or (g) is a class B nonperson
6 misdemeanor.

7 (j) Violation of subsections (e), (f) or (g) constitutes a deceptive act or
8 practice pursuant to K.S.A. 50-626, and amendments thereto, and shall be
9 subject to the remedies and penalties provided by the Kansas consumer
10 protection act.

11 (k) This section shall take effect on and after January 1, 2022.

25(b)

12 New Sec. 26. (a) Except as otherwise provided in section 4(b), and
13 amendments thereto, the failure of a notarial officer to perform a duty or
14 meet a requirement specified in this act does not invalidate a notarial act
15 performed by the notarial officer. The validity of a notarial act under this
16 act does not prevent an aggrieved person from seeking to invalidate the
17 record or transaction that is the subject of the notarial act or from seeking
18 other remedies based on state or federal law. This section does not validate
19 a purported notarial act performed by an individual who does not have the
20 authority to perform notarial acts.

21 (b) This section shall take effect on and after January 1, 2022.

22 New Sec. 27. (a) The secretary of state shall adopt rules and
23 regulations to implement this act. Rules and regulations adopted regarding
24 the performance of notarial acts with respect to electronic records shall not
25 require, or accord greater legal status or effect to, the implementation or
26 application of a specific technology or technical specification. The rules
27 and regulations may include, but are not limited to:

28 (1) Prescribing the manner of performing notarial acts regarding
29 tangible and electronic records;

30 (2) including provisions to ensure that any change to or tampering
31 with a record bearing a certificate of a notarial act is self-evident;

32 (3) including provisions to ensure integrity in the creation,
33 transmittal, storage or authentication of electronic records or signatures;

34 (4) prescribing the process of granting, renewing, conditioning,
35 denying, suspending or revoking a notary public commission and assuring
36 the trustworthiness of an individual holding a commission as notary
37 public;

38 (5) including provisions to prevent fraud or mistake in the
39 performance of notarial acts;

40 (6) establishing the process for approving and accepting surety bonds
41 and other forms of assurance pursuant to section 22(d), and amendments
42 thereto; and

43 (7) providing for the administration of the examination and the course

1 of study required by section 23, and amendments thereto.

2 (b) The secretary of state shall adopt rules and regulations regarding
3 notarial acts using communication technology for a remotely located
4 individual including, but not limited to:

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

7 (2) establishing standards for communication technology and identity
8 proofing;

9 (3) establishing requirements or procedures to approve providers of
10 communication technology and the process of identity proofing; and

11 (4) establishing standards and a period for the retention of an audio-
12 visual recording created pursuant to section 15, and amendments thereto.

13 (c) In adopting rules and regulations about notarial acts with respect
14 to electronic records, the secretary of state shall consider, so far as is
15 consistent with this act:

16 (1) The most recent standards regarding electronic records
17 promulgated by national bodies, such as the national association of
18 secretaries of state; and

19 (2) standards, practices and customs of other jurisdictions that
20 substantially enact this act.

21 New Sec. 28. (a) A commission or appointment as a notary public in
22 effect on January 1, 2022, continues until its date of expiration. A notary
23 public who applies to renew a commission as a notary public on or after
24 January 1, 2022, is subject to and shall comply with this act. A notary
25 public, in performing notarial acts after January 1, 2022, shall comply with
26 this act.

27 (b) This section shall take effect on and after January 1, 2022.

28 New Sec. 29. (a) This act does not affect the validity or effect of a
29 notarial act performed before January 1, 2022.

30 (b) A cause of action that has accrued against a notary public or the
31 notary public's securities before January 1, 2022, are governed by any
32 statute or other rule amended or repealed by this act as if amendment or
33 repeal had not occurred.

34 (c) This section shall take effect on and after January 1, 2022.

35 New Sec. 30. (a) In applying and construing this uniform act,
36 consideration shall be given to the need to promote uniformity of the law
37 with respect to its subject matter among states that enact it.

38 (b) This section shall take effect on and after January 1, 2022.

39 New Sec. 31. (a) This act modifies, limits and supersedes the federal
40 electronic signatures in global and national commerce act, 15 U.S.C. §
41 7001 et seq., except that nothing in this act modifies, limits or supersedes §
42 7001(c) of that act or authorizes electronic delivery of any of the notices
43 described in § 7003(b) of that act.

1 (b) This section shall take effect on and after January 1, 2022. ←
 2 Sec. 32. On and after January 1, 2022, K.S.A. 16-1611 is hereby
 3 amended to read as follows: 16-1611. ~~(a)~~ If a law requires a signature or
 4 record to be notarized, acknowledged, verified or made under oath, the
 5 requirement is satisfied if the electronic signature of the person authorized
 6 to perform those acts, together with all other information required to be
 7 included by other applicable law, is attached to or logically associated with
 8 the signature or record.

9 ~~(b) The secretary of state is hereby authorized to promulgate rules
 10 and regulations establishing procedures for an electronic notarization.~~

11 **Sec. 33. On and after January 1, 2022, K.S.A. 2019 Supp. 25-3602**
 12 **is hereby amended to read as follows: 25-3602. (a) Each petition shall**
 13 **consist of one or more documents pertaining to a single issue or**
 14 **proposition under one distinctive title. The documents shall be filed**
 15 **with the county election officer or other official, if another official is**
 16 **designated in the applicable statutes. The filing shall be made at one**
 17 **time all in one group. Later or successive filings of documents relating**
 18 **to the same issue or proposition shall be deemed to be separate**
 19 **petitions and not a part of any earlier or later filing.**

20 (b) Unless otherwise specifically required, each petition shall:

21 (1) State the question which petitioners seek to bring to an
 22 election in the form of a question as it should appear upon the ballot in
 23 accordance with the requirements of K.S.A. 25-620 and ~~K.S.A. 25-~~
 24 ~~3601~~, and amendments thereto;

25 (2) name the taxing subdivision or other political subdivision in
 26 which an election is sought to be held;

27 (3) contain the following recital above the spaces provided for
 28 signatures: "I have personally signed this petition. I am a registered
 29 elector of the state of Kansas and of

30
 31 (here insert name of political or taxing subdivision)
 32 and my residence address is correctly written after my name."

33 The recital shall be followed by blank spaces for the signature,
 34 residence address and date of signing for each person signing the
 35 petition.

36 When petitioners are required by law to possess qualifications in
 37 addition to being registered electors, the form of the petition shall be
 38 amended to contain a recital specifying the additional qualifications
 39 required and stating that the petitioners possess the qualifications;
 40 and

41 (4) contain a recital in substance as follows, at the end of each set
 42 of documents carried by each petition circulator as defined in K.S.A.
 43 2019 Supp. 25-3608, and amendments thereto: "I am the circulator of

New Sec. 32. All notarial acts performed by a notary public of this state while the requirements that a person must appear before a notary public are suspended pursuant to an executive order or other state law, shall be valid as if the individual had appeared before the notary public, notwithstanding any failure of any individual to appear personally before the notary public, if the notarial act meets all requirements prescribed by such executive order or other state law and all requirements prescribed by law that do not relate to appearance before the notary public.

Redesignate sections