

HCS HB 495 -- NOTARIES PUBLIC

SPONSOR: Gregory

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Standing Committee on Judiciary by a vote of 16 to 0. Voted "Do Pass" by the Standing Committee on Rules- Administrative Oversight by a vote of 7 to 0.

This bill repeals the current law regulating notaries public and replaces it with a new chapter.

In order to be commissioned as a notary, a person must be at least 18 years old, reside or have a regular place of work or business in Missouri, be a legal resident of the United States, read and write English, pass an examination, and submit an application with the Secretary of State (SOS). The SOS is given discretion to deny any application for reasons specified in the bill. Once the SOS has granted an application for a notary commission, the commission shall be presented to the appropriate county clerk and the applicant shall take an oath of office and present a \$10,000 bond within 60 days of the commission being issued.

Notary commissions last for a period of four years, or until the commission is revoked by the SOS or resigned by the person holding the commission. A notary commission issued to a person prior to the effective date of this bill shall not be invalidated, provided that, once such commission expires, this bill shall apply to the application for any new commission thereafter. The bill specifies by whom a notarial act may be performed in this state and what notarial acts such person may perform.

The bill further restricts the manner in which a notarial bill may be performed. Additionally, for every notarial bill involving a document, a notary shall properly complete a notarial certificate which shall include specified information.

The bill specifies how a notary public can confirm the identity of an individual using audio-video communication for whom the notary performs a notarial act.

The maximum fees that can be charged for performing a notarial bill range from \$1 to \$5, depending on the type of notarial bill requested. The bill permits a notary to charge a travel fee. However, a notary may not discriminate in the charging of fees based on the characteristics of the principal if such attributes would be a basis for employment discrimination under Missouri law.

The bill has specific requirements for electronic notarial acts and

for any notarized document sent to another state or nation.

Notaries are required to keep a chronological journal of notarial acts for a period of no less than 10 years following the last notarial bill. The bill stipulates the information that is required to be recorded in the journal. The journal may be examined and copied without restriction by a law enforcement officer in the course of an official investigation, subpoenaed by court order pursuant to subpoena power, or surrendered at the direction of the SOS. The bill does not prevent a notary public from seeking appropriate judicial protective orders. A notary public must, upon written request, furnish to the SOS certified copies of the notary's journal without cost.

Notaries are required to use an official seal when notarizing a paper document and the bill regulates what information must be present on and adjacent to the seal. At the expiration of the notary commission or upon resignation of the commission, the seal must be destroyed. If the notary commission has been revoked, the seal shall be delivered to the SOS for disposal. Failure to do so could result in a fine of \$500, at the discretion of the SOS.

The bill requires vendors and manufacturers to register with the SOS prior to selling or manufacturing notary seals. Furthermore, prior to providing a notary seal to a purchaser claiming to be a notary, the vendor or manufacturer shall require such person to present a notary commission. A vendor or manufacturer failing to comply with these requirements shall be subject to a fine of \$1,000 for each violation. For multiple violations, a vendor's permission to sell or manufacture notary seals may be withdrawn by the SOS.

The SOS is permitted to revoke and suspend notary commissions under this bill under certain circumstances. The SOS is required to revoke a notary commission if the notary fails to maintain a residence or a regular place of work or business in this state or if the notary fails to maintain status as a legal resident of the United States.

A notary shall be liable to any person for all damages proximately caused that person by the notary's negligence, intentional violation of law, or official misconduct in relation to a notarization.

A surety for a notary's bond shall be liable to any person for damages proximately caused that person by the notary's negligence, intentional violation of law, or official misconduct in relation to a notarization during the bond term, but this liability shall not exceed the dollar amount of the bond or of any remaining bond funds that have not been disbursed to other claimants.

An employer of a notary shall be liable to any person for all damages proximately caused that person by the notary's negligence, intentional violation of law, or official misconduct in performing a notarization during the course of employment, if the employer directed, expected, encouraged, approved, or tolerated the notary's negligence, violation of law, or official misconduct either in the particular transaction or, impliedly, by the employer's previous action in at least one similar transaction involving any notary employed by the employer.

A notary shall be guilty of a misdemeanor for knowingly failing to require the presence of a principal at the time of a notarial bill, failing to identify a principal through personal knowledge or satisfactory evidence, or executing a false notarial certificate.

Additionally, a notary who performs any other bill prohibited by this bill or fails to perform a required bill shall be guilty of a misdemeanor, punishable by a fine of no more than \$500 or imprisonment of not more than six months, or both.

Any person who is not a notary and who knowingly acts as or otherwise impersonates a notary shall be guilty of a misdemeanor, punishable upon conviction by a fine not exceeding \$500 or imprisonment for not more than six months, or both.

Any person who knowingly obtains, conceals, defaces, or destroys the seal, journal, or official records of a notary or who knowingly solicits, coerces, or in any way influences a notary to commit official misconduct shall be guilty of a misdemeanor, punishable upon conviction by a fine not exceeding \$500.

The provisions of this bill become effective January 1, 2020.

PROPOSERS: Supporters say that this bill seeks to overhaul the notary process and save costs by allowing electronic notarizing. This does not take away a person's ability to notarize "the old fashioned way," but it does provide an opportunity to do it electronically. Other states have already implemented this but it should be nationwide soon. This does not allow you to swear witnesses in remotely. Those who use the new electronic system should be able to have more certainty about signatures, and this should help the Secretary of State with lawsuits. It helps to have people be registered voters to help ensure they are not felons. The entire process is videotaped, which should make it more difficult to fake a signature.

Testifying for the bill were Representative Gregory; First American Title Insurance Company; Notarize, LLC; Missouri Realtors; and John

R. Ashcroft, Missouri Secretary of State.

OPPONENTS: Those who oppose the bill say that the only objection is to remote notarization and they would rather see a bill with minimum specifications for retention of records. Would also like to see a definition for multi-national organization.

Testifying against the bill were Missouri Land Title Association; Missouri Title Legislative Study Group, and Title Insurance Underwriters.