

SCS SB 578 -- CERTIFICATION OF DOCUMENTS

SPONSOR: Crawford

COMMITTEE ACTION: Voted "Do Pass" by the Standing Committee on Judiciary by a vote of 11 to 0.

This bill modifies provisions relating to the certification of documents, including processes for the recorder of deeds and procedures for notaries public.

RECORDER OF DEEDS AND ACKNOWLEDGMENTS OF CONVEYANCES OF LAND

If a document is required by law to be an original, on paper, or in writing for the purpose of recording, the document may be in electronic form. Furthermore, a requirement of notarization for a document or signature is satisfied if the electronic signature of the authorized person is attached to or logically associated with the document or signature. This bill also allows satisfaction of the document requirements if a paper copy of an electronic document bearing an electronic signature along with all other required information is certified by a notary. The form and requirements of such certification are provided for in this bill. The notary shall confirm that the electronic document contains an electronic signature that is capable of independent verification, shall personally print or supervise the printing of the document, and shall not make any changes to the document. A document conveying real property, recorded by a clerk, and not certified by a notary according to the bill shall put third persons on notice of the conveyance and is effective as if the document had been certified. The bill does not apply to the recording of certain plats, maps, or surveys of real property. For the purposes of proving or acknowledging a written instrument affecting real property by an officer, a person may appear before the officer by physical presence or by means of communication technology, as defined in the bill (Sections 59.568, 59.569, and 442.145, RSMo).

These provisions are similar to provisions in SB 409 (2019), SB 1002, and HCS HB 2506 (2018).

APPLICATION AND COMMISSION OF NOTARIES PUBLIC

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 4 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. However, once such commission expires, this bill shall apply to the application for any new commissions (Sections 486.605 to 486.635).

PERSONS PERMITTED TO PERFORM NOTARIAL ACTS

The following persons are permitted to perform notarial acts within this state:

- (1) A notary;
- (2) A judge, clerk, or deputy clerk of any Missouri court; or
- (3) Any other person authorized by Missouri law to perform a specific notarial bill (Section 486.775).

NOTARIAL ACTS AND FEES

The bill provides that a notary can perform any of the following notarial acts:

- (1) Acknowledgments;
- (2) Oaths and affirmations;
- (3) Jurats;
- (4) Signature witnessings;
- (5) Copy certifications; and
- (6) Any other bill specifically authorized by Missouri law.

The bill further restricts the manner in which a notarial act 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 maximum fees that can be charged for performing a notarial act range from \$1 to \$5, depending on the type of notarial act 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. In addition to the other fees

allowed, a remote online notary may charge a remote online notary transaction fee. The bill also has specific requirements for any notarized document sent to another state or nation (Sections 486.640 to 486.695, Sections 486.740 to 486.770, and Section 486.1160).

NOTARY JOURNAL

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 as authorized by law, or surrendered at the direction of the Secretary. Nothing in this provision shall prevent a notary public from seeking appropriate judicial protective orders. This bill also contains specific requirements for electronic journals (Sections 486.700 to 486.715, Sections 486.945 to 486.950, and Sections 486.1180 to 486.1190).

OFFICIAL NOTARY SEAL

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 (Sections 486.725 to 486.735).

CIVIL LIABILITY

A notary shall be liable to any person for all damages proximately caused 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. This provision applies to electronic notaries and remote online notaries (Sections 486.810 to 486.820).

REVOCATION AND SUSPENSION OF NOTARY COMMISSIONS

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. These provisions apply to electronic notaries and remote online notaries (Section 486.805).

CRIMINAL LIABILITY

A notary shall be guilty of a misdemeanor for knowingly committing any of the following:

- (1) Failing to require the presence of a principal at the time of a notarial act;
- (2) Failing to identify a principal through personal knowledge or satisfactory evidence; or
- (3) Executing a false notarial certificate.

Additionally, a notary who performs any other act prohibited by this bill or fails to perform a required act shall be guilty of a misdemeanor, punishable by a fine of no more than \$500 or imprisonment of not more than 6 months, or both. On the Part of Non-Notaries 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 (Section 578.700).

ELECTRONIC NOTARIES

This bill contains additional provisions relating to electronic notaries. In addition to courses required for commissioning as a notary, an electronic notary shall complete a course consisting of notarial laws, procedures, and ethics relating to electronic notarization. The bill provides the following notarial acts may be performed electronically:

- (1) Acknowledgments;
- (2) Jurats;
- (3) Signature witnessings; and
- (4) Copy certifications (Sections 486.900 to 486.1010).

REMOTE ONLINE NOTARIES

This bill contains additional provisions relating to remote online notaries. The Secretary shall develop and maintain standards for remote online notarization. In developing standards, the SOS shall consider the standards established by the National Association of Secretaries of State and national standard setting bodies. The Secretary shall also approve remote online notarization software as long as the software meets certain requirements defined in the bill. In addition to courses required for commissioning as a notary, a remote online notary shall complete a course consisting of notarial laws, procedures, and ethics relating to remote online notarization. The bill provides that acknowledgments and jurats may be performed remotely online by using communication technology (Sections 486.1100 to 486.1205).

This bill is similar to SB 593 (2020), SB 140, HB 495 (2019), the perfected SS SCS SB 1023, and HB 2590 (2018).

PROPONENTS: Supporters say that these statutes have not been updated since the '70s and this change is particularly relevant during this time.

Testifying for the bill were Senator Crawford; Missouri Land Title Association; Chuck A. Bowman, Monarch Title Company, Inc.; Mortgage Bankers Association of Missouri; Missouri Bankers Association; Richard Pierce, Fidelity National Financial; Cheryl Cowherd, Agents National Title Insurance Company; and Christine A. Cisar, Arrowhead Title Incorporated.

OPPONENTS: There was no opposition voiced to the committee.

