

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4089-03
Bill No.: HCS for HB 1874
Subject: Notary Public; Secretary of State
Type: Original
Date: March 5, 2020

Bill Summary: This proposal provides processes for the recorder of deeds to record electronic documents and procedures for remote online notarization.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
General Revenue	(Less than \$100,000 to Unknown)	(Less than \$100,000 to Unknown)	(Less than \$100,000 to Unknown)
Total Estimated Net Effect on General Revenue*	(Less than \$100,000 to Unknown)	(Less than \$100,000 to Unknown)	(Less than \$100,000 to Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Other State Funds*	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Legal Expense Fund**	\$0	\$0	\$0
Colleges and Universities*	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on Other State Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

*The potential (\$0 to Unknown) cost to the state (various funds) and local political subdivisions represents the potential for employers of notaries to be liable for damages (\$486.805.3).

**Transfers-in and Increased Payments net to \$0

Numbers within parentheses: () indicate costs or losses. This fiscal note contains 13 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Federal Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on <u>All</u> Federal Funds*	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Total Estimated Net Effect on FTE			

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Local Government*	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

*The potential (\$0 to Unknown) cost to the state (various funds) and local political subdivisions represents the potential for employers of notaries to be liable for damages (\$486.805.3).

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the Secretary of State (SOS)** assume many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$5,000. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could require additional resources.

Officials from the **Office of Administration - General Services** assume section 486.805 appears to create a new cause of action and damages. If a claim were successfully brought against a state agency or a state employee alleging a violation of this legislation, the Legal Expense Fund could be required to pay such claim or claims. However, the number of potential claims, the severity of those claims, and the ultimate costs associated with any settlement or judgment resulting from those claims cannot be forecasted with any degree of assurance to their accuracy.

The state self-assumes its own liability under the state Legal Expense Fund, Section 105.711, RSMo. It is a self-funding mechanism whereby funds are made available for the payment of any claim or judgment rendered against the state in regard to the waivers of sovereign immunity or against employees and specified individuals. Investigation, defense, negotiation or settlement of such claims is provided by the Office of the Attorney General. Payment is made by the Commissioner of Administration with the approval of the Attorney General.

ASSUMPTION (continued)

Oversight notes most LEF costs are reimbursed from the General Revenue Fund (GR). GR has paid for the majority of payments from the LEF since payments on LEF cases for agencies with designated reimbursable funds have been relatively small. According to Office of Administration - Risk Management (OARM), broader budget authority to transfer from Federal and Other Funds beginning in FY 18 allowed for an increase of percentage of payments from Federal and Other Funds. Table 1 below shows LEF costs broken down for GR versus Federal Funds/Other Funds.

Table 1: Legal Expense Fund payments from GR and Fed/Other

	GR	Fed/Other	Total	GR %	Fed/Other %
FY 15	\$9,197,461	\$661,555	\$9,859,016	93%	7%
FY 16	\$11,386,339	\$600,489	\$11,986,828	95%	5%
FY 17	\$19,983,784	\$4,217,582	\$24,201,366	83%	17%
FY 18	\$18,625,000	\$9,649,513	\$28,274,513	66%	34%
Total	\$59,192,584	\$15,129,139	\$74,321,723	80%	20%

Source: Office of Administration

OARM provided Oversight with claim payment data from FY 2015 to FY 2018. Based on the data provided, Oversight estimated the number of claims and amount paid by claim type shown in table 2 below. Motor vehicle claims accounted for 69% of the total number of claims but only 11% of the value of claims. Claims related to discrimination accounted for 8% of the total number of claims but 25% of the value of claims paid.

ASSUMPTION (continued)

Table 2: Payment data **by type** of claim (FY 15-18)

Type of Claim	Number of Claims	Cost of Claims
Discrimination	67	\$19.6 million
Wrongful Death	5	\$11.9 million
Motor Vehicle	583	\$8.6 million
Medical Malpractice	10	\$8.3 million
STL & KC Police	5	\$5.4 million
Tort	10	\$4.6 million
Harassment	3	\$4.3 million
Personal Injury	10	\$3.6 million
Class Action Law Suit	1	\$2.6 million
Dangerous Condition of Property	96	\$1.6 million

Source - OARM: Includes motor vehicle and dangerous condition of property claims.

Oversight notes the cost of any potential liability would be entirely dependent of the number of claims and circumstances of the claims filed; therefore the cost is ultimately unknown.

Oversight does not have any information to the contrary in regards to OA’s assumption; therefore, Oversight will range the fiscal impact from \$0 (does not increase litigation) to an “Unknown” cost to the Legal Expense Fund as well as to Colleges and Universities (increased claims).

For the purpose of this proposed legislation, officials from the **Office of State Public Defender (SPD)** state they cannot assume that existing staff will provide effective representation for any new cases arising where indigent persons are charged with any of the proposed new crimes regarding Notaries - all new Misdemeanors. In FY 2020, SPD did not have any cases under RSMo 486. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards.

ASSUMPTION (continued)

While the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional funding for this specific bill, the SPD will continue to request sufficient appropriations to provide effective representation in all cases where the right to counsel attaches.

Oversight notes over the last three fiscal years, the SPD has lapsed a total of \$153 of General Revenue appropriations (\$2 out of \$28.0 million in FY 2017; and \$150 out of \$42.5 million in FY 2018; and \$1 out of \$46.0 million in FY 2019). Therefore, **Oversight** assumes the SPD is at maximum capacity and the increase in workload resulting from this bill cannot be absorbed within SPD's current resources.

Adding one additional Assistant Public Defender 1 (APD) with a starting salary of \$47,000, will cost approximately \$74,500 per year in personal service and fringe benefit costs. One additional APD II (\$52,000 per year; eligible for consideration after 1 year of successful performance at APD I) will cost the state approximately \$81,000 per year in personal service and fringe benefit costs. When expense and equipment costs such as travel, training, furniture, equipment and supplies are included, Oversight assumes the cost for a new APD could approach \$100,000 per year.

Oversight assumes the SPD cannot absorb the additional caseload that may result from this proposal within their existing resources and, therefore, will reflect a potential additional cost of (Less than \$100,000) per year to the General Revenue Fund.

Officials from the **Joint Committee on Administrative Rules (JCAR)** state this legislation is not anticipated to cause a fiscal impact beyond its current appropriation.

Oversight assumes JCAR will be able to administer any rules resulting from this proposal with existing resources.

Officials from the **Office of Prosecution Services** assume there is no measurable fiscal impact. The enactment of new crimes creates additional responsibilities for county prosecutors which may in turn result in additional costs which are difficult to determine.

Officials from the **Department of Transportation** assume the fiscal impact of this bill is not quantifiable, but is likely negative. Chapter 486.805.3 extends liability to MoDOT, as an employer of notaries public, for negligence in the course of employment. The notary bond will likely be unavailable to MoDOT in the distribution of such costs, even in the event that the bond was posted by MoDOT on the notary's behalf. Therefore, the potential risk of litigation against MoDOT is likely to increase.

ASSUMPTION (continued)

Officials from the **Missouri Department of Conservation, Department of Corrections, Department of Public Safety-Missouri State Highway Patrol, Department of Labor and Industrial Relations, Department of Public Safety-Capitol Police, Office of State Courts Administrator, Department of Public Safety-Veterans, Department of Commerce & Insurance, Attorney General's Office, Department of Revenue, Department of Public Safety-State Emergency Management Agency, Missouri Senate, Missouri Tax Commission, Department of Public Safety-Fire Safety, Missouri Lottery Commission, Legislative Research, Department of Public Safety-Gaming Commission, Missouri State Employees' Retirement System, Office of Administration-Administrative Hearing Commission, Department of Public Safety-National Guard, Department of Higher Education and Workforce Development, Missouri Consolidated Health Care Plan, Office of the Governor, Department of Health and Senior Services, Department of Agriculture, Missouri House of Representatives, State Auditor's Office, Department of Social Services, Office of the State Treasurer, Department of Natural Resources, MoDOT and Patrol Employees Retirement System, Department of Mental Health, and Department of Public Safety-Office of the Director** each assume the proposal will have no fiscal impact on their respective organizations.

Oversight notes that the above agencies have stated the proposal would not have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact on the fiscal note for these agencies.

Officials from the **City of Kansas City** assume the proposal will have no fiscal impact on their organization.

Oversight notes there is a potential of unknown cost to local political subdivisions that employ notaries. Therefore, Oversight will range the fiscal impact to local political subdivisions from \$0 (does not increase litigation to local governments) to an "Unknown"(increased claims).

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, other cities, counties, county clerks and recorder of deeds were requested to respond to this proposed legislation but did not. A general listing of political subdivisions included in our database is available upon request.

<u>FISCAL IMPACT - State Government</u>	FY 2021 (6 Mo.)	FY 2022	FY 2023
GENERAL REVENUE FUND			
<u>Cost</u> - Potential increase in payments to Legal Expense Fund for increase in claims (§486.805)	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<u>Cost</u> - Office of the State Public Defender (§578.700)	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	(Less than \$100,000 to <u>Unknown</u>)	(Less than \$100,000 to <u>Unknown</u>)	(Less than \$100,000 to <u>Unknown</u>)
OTHER STATE FUNDS			
<u>Cost</u> - Potential increase in payments to Legal Expense Fund for increase in claims (§486.805)	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT TO OTHER STATE FUNDS	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
FEDERAL FUNDS			
<u>Cost</u> - Potential increase in payments to Legal Expense Fund for increase in claims (§486.805)	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT TO FEDERAL FUNDS	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2021 (6 Mo.)	FY 2022	FY 2023
--	--------------------	---------	---------

LEGAL EXPENSE FUND (0692)

<u>Transfer In</u> - from GR, Federal, and Other State Funds Potential increase in claims (\$486.805)	\$0 to <u>Unknown</u>	\$0 to <u>Unknown</u>	\$0 to <u>Unknown</u>
---	-----------------------	-----------------------	-----------------------

Transfer Out - payment of claims (\$486.805)	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
---	----------------------------	----------------------------	----------------------------

ESTIMATED NET EFFECT TO THE LEGAL EXPENSE FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
---	-------------------	-------------------	-------------------

COLLEGES AND UNIVERSITIES

<u>Cost</u> - Colleges and Universities Potential increase in claims (\$486.805)	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
---	----------------------------	----------------------------	----------------------------

ESTIMATED NET EFFECT ON COLLEGES AND UNIVERSITIES	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
--	------------------------------------	------------------------------------	------------------------------------

<u>FISCAL IMPACT - Local Government</u>	FY 2021 (6 Mo.)	FY 2022	FY 2023
---	--------------------	---------	---------

LOCAL POLITICAL SUBDIVISIONS

<u>Cost</u> Potential increase in claims (\$486.805)	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
---	----------------------------	----------------------------	----------------------------

ESTIMATED NET EFFECT TO LOCAL POLITICAL SUBDIVISIONS	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
---	------------------------------------	------------------------------------	------------------------------------

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

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 act. 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 act may be performed. Additionally, for every notarial act involving a document, a notary shall properly complete a notarial certificate which shall include specified information.

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

The maximum fees that may 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.

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 act. 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

FISCAL DESCRIPTION (continued)

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 as specified in the bill. 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.

FISCAL DESCRIPTION (continued)

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

Additionally, a notary who performs any other act prohibited by this act 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 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.

Some provisions of this bill become effective January 1, 2021.

Some provisions of this bill become effective July 1, 2021.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

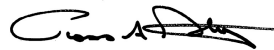
Office of Administration
Office of the State Public Defender
Joint Committee on Administrative Rules
Office of Prosecution Services
Department of Transportation
Missouri Department of Conservation
Department of Corrections
Department of Public Safety-Missouri State Highway Patrol
Department of Labor and Industrial Relations
Department of Public Safety-Capitol Police
Office of State Courts Administrator
Department of Commerce & Insurance

SOURCES OF INFORMATION (continued)

Attorney General's Office
Department of Public Safety-Office of the Director
Department of Revenue
Department of Public Safety-State Emergency Management Agency
Missouri Senate
Missouri Tax Commission
Department of Public Safety-Fire Safety
Missouri Lottery Commission
Legislative Research
Department of Public Safety-Gaming Commission
Missouri State Employees' Retirement System
Office of Administration-Administrative Hearing Commission
Department of Public Safety-National Guard
Department of Higher Education and Workforce Development
Missouri Consolidated Health Care Plan
Office of the Governor
Department of Health and Senior Services
Department of Agriculture
MoDOT and Patrol Employees Retirement System
Missouri House of Representatives
Department of Public Safety-Veterans Commission
State Auditor's Office
Department of Social Services
Office of the State Treasurer
Department of Mental Health
Department of Natural Resources
Office of the Secretary of State
City of Kansas City



Julie Morff
Director
March 5, 2020



Ross Strope
Assistant Director
March 5, 2020