

HCS HB 1874 -- CERTIFICATION OF DOCUMENTS

SPONSOR: Gregory

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Standing Committee on General Laws by a vote of 13 to 0. Voted "Do Pass" by the Standing Committee on Rules- Legislative Oversight by a vote of 10 to 0.

The following is a summary of the House Committee Substitute for HB 1874.

This bill provides processes for the Recorder of Deeds to record electronic documents and procedures for remote online notarization.

RECORDER OF DEEDS

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 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 the 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 as specified in 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).

NOTARIES PUBLIC

This bill repeals the current law regulating notaries public and replaces it as follows.

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 (Sections 486.605 to 486.635 and 486.775).

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 (486.640 to 486.695, 486.740 to 486.770 and 486.1160).

#### NOTARY JOURNAL AND SEAL

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 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 (Sections 486.700 to 486.715, 486.725 to 486.735, 486.945, 486.950, 4863.1180 to 486.1190).

#### CIVIL LIABILITY

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 (Section 486.805).

#### REVOCATION AND SUSPENSION OF NOTARY COMMISSIONS

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 (Sections 486.810-486.820).

#### CRIMINAL LIABILITY

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 (Section 578.700).

#### ELECTRONIC NOTARIES AND REMOTE ONLINE NOTARIES

This provision applies to electronic notaries and remote online 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. Notarial acts for acknowledgments, jurats, signature witnessings and copy certifications may be performed electronically. The bill requires an electronic notary to attach the electronic notarial certificate a registered electronic signature that is unique to the electronic notary and capable of independent verification.

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 must approve remote online notarization software to determine the software meets specified requirements .

In addition to courses required for commissioning as a notary, an remote online notary shall complete a course consisting of notarial laws, procedures, and ethics relating to remote online notarization and pass an exam. The bill provides that acknowledgments and jurats may be performed remotely online by using communication technology. (Sections 486.805, 486.900 to 486.1010 and 486.1100 to 486.1205)

Except for the provisions relating to remote online notarization, the provisions of this act becomes effective January 1, 2021. The provisions of this act relating to remote online notarization becomes effective July 1, 2021.

This bill is the same as SCS SB 578 (2020) and similar to HCS HB 495 (2019).

The following is a summary of the public testimony from the committee hearing. The testimony was based on the introduced version of the bill.

PROPOSERS: Supporters say that this bill re-writes current notary law. The Secretary of State has worked for nearly three years to improve the notary law. The Secretary of State's office has authority to make changes in the rule making process. This bill will raise the notary fees because the fees have not changed in decades.

Testifying for the bill were Representative Gregory; Missouri Bankers Association; Missouri Land Title Association; John Ashcroft, Missouri Secretary Of State Office; Missouri Realtors; Tony Shepherd, and Abate Missouri.

OPPOSERS: There was no opposition voiced to the committee.