

Secretary of State
Notice of Hearing on Proposed Administrative Regulations

A public hearing will be conducted at 1:00 p.m., Tuesday, September 6, 2022, in the second-floor auditorium at Memorial Hall, 120 SW 10th Ave., Topeka, KS, regarding the repeal of Kansas Administrative Regulations 7-43-1 to 7-43-6 and the adoption of Kansas Administrative Regulations 7-43-7 to 7-43-24, pertaining to notaries public, pursuant to the enactment of the Revised Uniform Law on Notarial Acts (KSA 53-5a01 to 53-5a31). The statutory authority for the Secretary of State to promulgate these regulations is KSA 53-5a27.

These regulations include provisions on notary journals, notary stamps, notarial certificates, remote notarization security, remote notarization providers, and notary complaints.

Adopting these regulations imposes only small economic burdens on notaries if they voluntarily decide to provide remote notarizations. These regulations impose no environmental impact.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed regulations. Comments may be submitted prior to the hearing to Clay Barker, General Counsel, Office of the Secretary of State, Memorial Hall, 120 SW 10th Ave., Topeka, KS 66612-1594, or to clay.barker2@ks.gov. All interested parties will be given a reasonable opportunity at the hearing to present their views. Additionally, interested parties wanting to participate remotely may contact Clay Barker at clay.barker2@ks.gov to obtain remote access information. It may be necessary to request each participant to limit any oral presentation to five minutes.

Any individual with a disability may request accommodation to participate in the public hearing and may request the proposed regulations and economic impact statements in an accessible format. Requests for accommodation should be made at least five days in advance of the hearing by contacting Clay Barker at 785-296-3483 or the Kansas Relay Center at 1-800-766-3777.

Copies of the full text of the regulations and economic impact statements may be obtained at the address above for the Office of the Secretary of State or by contacting Lara Murphy, Director of Administrative Regulations and Publications, at 785-296-0082 or lara.murphy@ks.gov. The proposed regulations are also available on the Secretary of State's website at www.sos.ks.gov.

Scott Schwab
Secretary of State

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7-43-1. (Authorized by and implementing K.S.A. 2004 Supp. 16-1611; effective Dec. 30, 2005;

revoked, T-_____, _____; revoked P-_____.)

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7-43-2. (Authorized by and implementing K.S.A. 2004 Supp. 16-1611 and 75-438; effective
Dec. 30, 2005; revoked, T-_____, _____; revoked P-_____.)

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7-43-3, 7-43-4, 7-43-5, and 7-43-6. (Authorized by and implementing K.S.A. 2004 Supp. 16-1611; effective Dec. 30, 2005; revoked, T-_____, _____; revoked P-_____.)

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7-43-7. Definitions. For purposes of this article of the secretary's regulations, each of the following terms shall have the meaning specified in this regulation:

(a) "Digital certificate" has the meaning specified for "certificate" in K.A.R. 7-41-1.

(b) "Notarial certificate" means the certificate evidencing the performance of a notarial act.

(c) "Secretary" means secretary of state. (Authorized by and implementing K.S.A. 2021 Supp. 53-5a27; effective, T-_____, _____; effective P-_____.)

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7-43-8. Notary public commission with respect to notarial acts for electronic records and

for remotely located individuals. (a) Any applicant submitting an initial application for a notary commission and any notary public at any time during the notary public's commission may notify the secretary that the applicant or notary public intends to perform notarizations of electronic records or for remotely located individuals. The notification shall be provided on forms prescribed by the secretary along with the fee specified in K.A.R. 7-43-11.

(b) Upon the notification and receipt of the required fee, a commission reflecting the notification to perform notarial acts on electronic records or for remotely located individuals shall be provided by the secretary.

(c) The authorization to perform notarial acts on electronic records or for remotely located individuals shall be concurrent with, and shall expire on the same date as, the notary public's commission.

(d) Any notary public who is authorized to perform notarial acts on electronic records or for remotely located individuals may terminate the authorization at any time during the notary public's commission by submitting to the secretary a form prescribed by the secretary.

(Authorized by K.S.A. 2021 Supp. 53-5a27; implementing K.S.A. 2021 Supp. 53-5a15, 53-5a21, and 53-5a22; effective, T-_____, _____; effective P-_____.)

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7-43-9. Course of study and examination. (a) Each notary public who provides notification to the secretary that the individual intends to perform notarizations of electronic records or notarizations for remotely located individuals shall complete a course of study approved by the secretary and shall be required to pass an examination approved by the secretary with at least a minimum score that is specified at the beginning of the examination. Any notary public may take the examination as many times as needed to achieve a passing score.

(b) Each notary public shall provide the secretary with proof of successful completion of the examination as part of the notification to perform notarial acts on electronic records or for remotely located individuals. (Authorized by K.S.A. 2021 Supp. 53-5a27; implementing K.S.A. 2021 Supp. 53-5a23; effective, T-_____, _____; effective P-_____.)

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7-43-10. Surety bond. Each surety bond for a notary public shall be a commercial surety bond from an insurance company licensed to do business in Kansas. The surety bond shall be written for a term of four years, covering the dates of the notary public's commission. (Authorized by K.S.A. 2021 Supp. 53-5a27; implementing K.S.A. 2021 Supp. 53-5a22; effective, T-_____, _____; effective P-_____.)

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7-43-11. Fees to perform notarial acts with respect to electronic records and for remotely

located individuals. (a) Each applicant or notary public who provides notification to the secretary that the individual intends to perform notarial acts with respect to electronic records shall pay an information and services fee of \$20.

(b) Each applicant or notary public who provides notification to the secretary that the individual intends to perform notarial acts for remotely located individuals shall pay an information and services fee of \$20. (Authorized by K.S.A. 2021 Supp. 53-5a27; implementing K.S.A. 2021 Supp. 53-5a15 and 53-5a21; effective, T-_____, _____; effective P-_____.)

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7-43-12. Renewal of notary public commission. (a) Any notary public commission and any notification to perform notarial acts on electronic records or for remotely located individuals may be renewed in the manner and on the form used to file an initial application for a notary commission and notification to perform notarial acts on electronic records or for remotely located individuals, along with payment of the prescribed fees.

(b) Any application for renewal of a notary public commission may be submitted to the secretary no sooner than 90 days before the expiration of the notary public's commission. Upon the receipt of a completed application and approval by the secretary, a notary commission shall be issued to the applicant.

(c) When renewing a notary public commission, the notary public shall also submit a notification and the appropriate fee if the notary public intends to continue performing notarial acts on electronic records or for remotely located individuals. (Authorized by K.S.A. 2021 Supp. 53-5a27; implementing K.S.A. 2021 Supp. 53-5a22; effective, T-_____, _____; effective P-_____.)

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7-43-13. Stamping device; official stamp for a tangible record. (a) Each notary public's stamping device shall be retained under the notary public's sole control. Each notary public who obtains a new stamping device for use on a tangible record shall destroy or render unusable any previous stamping device, if the previous stamping device will no longer be used. When replacing a stamping device that has been lost or stolen, the notary public shall use a different style of official stamp to ensure that the new official stamp looks different from the prior official stamp.

(b) In addition to the requirements of state law, each notary public's official stamp for a tangible record shall provide a space for the notary public to record the notary public's commission expiration date. (Authorized by K.S.A. 2021 Supp. 53-5a27; implementing K.S.A. 2021 Supp. 53-5a18 and 53-5a19; effective, T-_____, _____; effective P-_____.)

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7-43-14. Official stamp for an electronic record. (a) When affixed to an electronic record, the official stamp on a notarial certificate shall be clear, legible, and photographically reproducible. An official stamp shall not be required to be within a minimum or maximum size when photographically reproduced on an electronic record. Each official stamp used shall include the following:

- (1) The notary public's name exactly as indicated on the notary public's commission;
- (2) the words "State of Kansas" and "Notary Public";
- (3) the notary public's commission number; and
- (4) the date of expiration of the notary public's commission.

(b) Each notary public's stamping device shall be retained under the notary public's sole control and shall be secured by the notary public by means of a password or other secure method of authentication. A notary public shall not disclose any access information used to affix the notary public's electronic signature or official stamp to electronic records, except when required by a court order or subpoena.

(c) Each notary public shall promptly notify the secretary on actual knowledge of the theft, vandalism, or unauthorized use by another person of the notary public's stamping device.

(d) When a notary public resigns a commission or a notary public's commission is revoked, the notary public shall request the provider of the notary public's digital certificate to revoke the digital certificate and provide evidence of the revocation to the secretary. (Authorized by K.S.A. 2021 Supp. 53-5a27; implementing K.S.A. 2021 Supp. 53-5a16, 53-5a18, and 53-5a19; effective, T-_____, _____; effective P-_____.)

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7-43-15. Notary public's journal. (a) Each notary public shall retain that notary public's records in a journal under the notary public's sole control.

(b) Each notary public's records shall be capable of being produced in a tangible medium when requested. (Authorized by K.S.A. 2021 Supp. 53-5a27; implementing K.S.A. 2021 Supp. 53-5a20; effective, T-_____, _____; effective P-_____.)

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7-43-16. Fee for performing a notarial act. (a) Any notary public may charge a fee for performing a notarial act with respect to a tangible record or an electronic record or a notarial act for a remotely located individual. If the notary public charges a fee, the notary public shall ensure that all the following requirements are met:

(1) The fee shall be disclosed to the signer and agreed to by the signer before the notarial act is performed.

(2) The fee shall be collected when the notarial act is performed.

(3) The fee shall be recorded in the notary public's journal.

(b) The notary public shall disclose to the signer that the fee is permitted but is not required by state law or regulation. (Authorized by K.S.A. 2021 Supp. 53-5a27; implementing K.S.A. 2021 Supp. 53-5a20; effective, T-_____, _____; effective P-_____.)

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7-43-17. Short form notarial certificates; statement for notarial act for a remotely located

individual. (a) When a notary public performs a notarial act for a remotely located individual, the notarial certificate shall contain a statement substantially as follows: "This notarial act involved the use of communication technology."

(b) The following short form notarial certificates shall be sufficient for the purposes indicated, if completed in conformance with the procedures required for a notarial act:

(1) For an acknowledgment in an individual capacity:

"State of _____
County of _____

This record was acknowledged before me on _____ by _____
Date Name(s) of person(s)

Signature of notarial officer

[Official Stamp]

Title of office

My commission expires: _____"

(2) For an acknowledgment in a representative capacity:

"State of _____
County of _____

This record was acknowledged before me on _____ by _____
Date Name(s) of person(s)

as [type of authority, such as officer or trustee] of [name of party on behalf of whom record was executed].

Signature of notarial officer

[Official Stamp]

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Title of office

My commission expires: _____”

(3) For a verification on oath or affirmation:

“State of _____
County of _____

Signed and sworn to (or affirmed) before me on _____ by _____
Date Name(s) of person(s) making statement

Signature of notarial officer

[Official Stamp]

Title of office

My commission expires: _____”

(4) For witnessing or attesting a signature:

“State of _____
County of _____

Signed (or attested) before me on _____ by _____
Date Name(s) of person(s)

Signature of notarial officer

[Official Stamp]

Title of office

My commission expires: _____”

(5) For certifying a copy of a record:

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"State of _____
County of _____

I certify that this is a true and correct copy of a record in the possession
of _____. Dated _____

Signature of notarial officer

[Official Stamp]

Title of office

My commission expires: _____"

(6) For power of attorney in a representative capacity:

"State of _____
County of _____

This instrument was signed before me on _____ by _____
Date Name(s) of designee(s)
as power of attorney of _____
name of party on behalf of whom instrument was executed.

Signature of notarial officer

[Official Stamp]

Title of office

My commission expires: _____" (Authorized by K.S.A. 2021 Supp. 53-5a17;
implementing K.S.A. 2021 Supp. 53-5a15 and 53-5a17; effective, T-_____, _____;
effective P-_____.)

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7-43-18. Standards for identity verification of a remotely located individual. (a) If a notary public does not have personal knowledge of a remotely located individual pursuant to K.S.A. 2021 Supp. 53-5a07(a) or satisfactory evidence of the identity of a remotely located individual pursuant to K.S.A. 2021 Supp. 53-5a07(b)(2) and amendments thereto, the notary public shall obtain satisfactory evidence of the identity of the remotely located individual through a multifactor authentication procedure as follows:

(1) Analyze the identification credential presented by the remotely located individual against trusted third-person data sources using a process that shall, at a minimum, meet the following requirements:

(A) Use public or private data sources to confirm the validity of the identification credential;

(B) use automated software processes to aid the notary public in verifying the identity of each remotely located individual;

(C) require that the identification credential pass an authenticity test, consistent with sound commercial practices that use appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features; confirm that the identification credential is not fraudulent or inappropriately modified; and provide the results of the authenticity test to the notary public; and

(D) use information held or published by the issuing source or an authoritative source, as available and consistent with sound commercial practices, to confirm the validity of personal details and identification credential details; and

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(2) verify the remotely located individual's identity by requiring the individual to answer a quiz consisting of at least five questions related to the individual's personal history or identity and formulated from public or private data sources, as follows:

(A) The quiz shall meet the following requirements:

- (i) Each question shall have at least five possible answer choices;
- (ii) at least 80 percent of the questions shall be answered correctly; and
- (iii) all questions shall be answered within two minutes;

(B) if the remotely located individual fails to answer at least 80 percent of the questions correctly on the first attempt, the individual may retake the quiz one time within 24 hours.

During a retake of the quiz, at least 40 percent of the prior questions shall be replaced;

(C) if the remotely located individual fails the second attempt, the individual shall not be allowed to retake the quiz with the same notary public within 24 hours of the second failed attempt; and

(D) the notary public shall not be able to see or record the questions or answers.

However, the results indicating passage or failure of the quiz shall be provided to the notary public.

(b) After obtaining satisfactory evidence of the identity of the remotely located individual as described by this regulation, the remotely located individual shall visually compare for consistency the information and photo presented on the identification credential itself and the individual as viewed by the notary public in real time through communication technology. The image resolution of the communication technology being used shall be sufficient to enable visual

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inspection by the notary public, including legible text and the clarity of identification credential features.

(c) Any notary public may obtain satisfactory evidence of the identity of a remotely located individual by oath or affirmation of a credible witness by means of one of the following:

(1) Having personal knowledge of the identity of the credible witness by the notary public;

(2) presenting an identification credential to the notary public, as required by K.S.A. 2021 Supp. 53-5a07(b)(2) and amendments thereto, if the credible witness is in the same location as the notary public; or

(3) utilizing the multifactor authentication procedure required by this regulation for verifying the identity of a remotely located individual and visually inspecting the identification credential presented by the credible witness if the witness is not in the same location as the notary public.

(d) If a remotely located individual must exit the notarization session at any point, the notary public shall reverify the identity of the remotely located individual as required by this regulation. (Authorized by K.S.A. 2021 Supp. 53-5a27; implementing K.S.A. 2021 Supp. 53-5a15; effective, T-_____, _____; effective P-_____.)

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7-43-19. Security of records bearing a notarial certificate. (a) For each tangible record, the notary public shall affix the notarial certificate directly on the record to be notarized, except as provided in this subsection. If a notarial certificate cannot be affixed to a record to be notarized because the record lacks adequate space for a notarial certificate, the notary public shall affix a notarial certificate to a separate page and attach the record to the notarial certificate by staple or other secure method so that the removal of the record or the addition of a record is discernible. Each attachment shall include a description of the document to which it is attached.

(b)(1) For each electronic record, the notary public shall attach or logically associate the notary public's electronic signature by use of a digital certificate to a notarial certificate that is affixed to or logically associated with the electronic record that is the subject of a notarial act. The digital certificate shall have tamper-evident technology meeting the following requirements:

(A) The name on the electronic official stamp shall match the name, as stated on the application, under which the notary public is commissioned and performs all remote notarial acts.

(B) The technology used to attach an electronic signature to a document shall allow the notary public's electronic signature to meet the following requirements:

- (i) Be attributed or uniquely linked to the notary public;
- (ii) be capable of independent verification;
- (iii) be retained under the notary public's exclusive control by use of passphrase protection; and
- (iv) be attached to or logically associated with the electronic document to which it relates in such a manner that any subsequent change of the electronic document is detectable.

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(2) A notary public shall not perform a notarial act with respect to an electronic record if the digital certificate meets any of the following conditions:

- (A) Has expired;
- (B) has been revoked or terminated by the issuing or registering authority;
- (C) is invalid; or
- (D) is incapable of authentication.

(3) Any notary public may attach an official stamp to a notarial certificate that is affixed to or logically associated with the electronic record. (Authorized by K.S.A. 2021 Supp. 53-5a27; implementing K.S.A. 2021 Supp. 53-5a16, 53-5a18, and 53-5a27; effective, T-_____, _____; effective P-_____.)

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7-43-20. Notarial acts for remotely located individuals. (a) Any notary public may perform notarial acts for remotely located individuals only after being commissioned as a notary public and notifying the secretary that the notary public will be performing notarial acts for remotely located individuals.

(b) A notary public shall not perform a notarial act for a remotely located individual if the notary public is not physically located in Kansas at the time of the notarization.

(c) Upon performing a notarial act for a remotely located individual, the notary public shall electronically attach a notarial certificate to the document being notarized. Each notarial certificate for a notarial act for a remotely located individual shall meet the following requirements:

- (1) State the name of the remotely located individual;
- (2) provide the date the notarial act occurred;
- (3) identify the state and county in which the notarial act was performed;
- (4) include a description of the type of notarial act performed, which shall be sufficient if the description is substantially similar to a short form specified in K.A.R. 7-43-17;
- (5) include a statement regarding the use of communication technology as specified in K.A.R. 7-43-17; and
- (6) contain the notary public's official stamp that is attached to the record and signed by the notary public with the notary public's digital certificate.

(d) Each notary public who performs a notarial act for a remotely located individual shall maintain an audiovisual recording of all notarial acts in addition to a journal of notarial acts that

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contains the entries required under K.S.A. 2021 Supp. 53-5a20(c), and amendments thereto. The audiovisual recording shall include the following, at a minimum:

- (1) Confirmation by the notary public that the individual has successfully completed identity proofing and credential analysis;
- (2) visual confirmation of the identity of the individual through visual inspection of the credential used during credential analysis; and
- (3) the actual notarial act performed.

(e) Each notary public shall attach that individual's electronic signature to the notarial certificate on an electronic record in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic record tamper-evident.

(Authorized by K.S.A. 2021 Supp. 53-5a27; implementing K.S.A. 2021 Supp. 53-5a15, 53-5a16, and 53-5a21; effective, T-_____, _____; effective P-_____.)

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7-43-21. Notarial acts for a remotely located individual; communication technology

standards. (a) The communication technology standards for notarial acts performed for remotely located individuals shall meet the following requirements, and the provider shall submit evidence of compliance to the secretary under penalty of perjury:

(1) Provide for continuous, synchronous audiovisual feeds of sufficient video resolution and audio clarity to enable the notary public and the remotely located individual to see and speak with each other;

(2) provide a means for the notary public reasonably to confirm that the electronic record before the notary public is the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature;

(3) utilize a means of authentication that reasonably ensures that only the proper parties have access to the audiovisual recording;

(4) be capable of securely creating and storing or transmitting securely to be stored the recording of the audiovisual communication;

(5) keep confidential the questions asked as part of any identity proofing quiz and the means and methods used to generate the results of the credential analysis; and

(6) provide reasonable security measures to prevent unauthorized access to the following:

(A) The live transmission of the audiovisual communication;

(B) the recording of the audiovisual communication; and

(C) the electronic records presented for electronic notarization.

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(b) A notary public shall not be prohibited from receiving, installing, or using a hardware or software update to the technologies that the notary public identified in a notification form to perform notarial acts for remotely located individuals if the hardware or software update is not materially different from the technologies that the notary public identified on the notification form to perform notarial acts for remotely located individuals. If the provider of the technology notifies the notary public that the hardware or software update is materially different, the notary public shall notify the secretary of the updated technology.

(c) All communication technology that is verified by the provider of the communication technology under penalty of perjury as meeting the requirements in this regulation shall be approved by the secretary. (Authorized by K.S.A. 2021 Supp. 53-5a27; implementing K.S.A. 2021 Supp. 53-5a15; effective, T-_____, _____; effective P-_____.)

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7-43-22. Notarial acts for remotely located individuals; providers of communication

technology. (a)(1) Any notary public authorized to perform notarial acts for remotely located individuals may use a provider of communication technology and identity proofing if the provider has submitted evidence under penalty of perjury to the secretary and to the notary public that the provider meets the requirements in K.A.R. 7-43-18 and 7-43-19(b), in addition to the following:

(A) Allowing the notary public sole control of the recording of the notarial act using audiovisual communication, subject to the authorized access granted by the notary public; and

(B) providing the notary public with access to the recording of the notarial act using audiovisual communication technology.

(2) The provider shall make and retain a secure backup of any record that is related to a notarial act for a remotely located individual.

(A) If the provider of communication technology and the provider of the backup are the same entity and the provider ceases business operations, the provider shall notify the notary public in advance of the cessation of business operations and, at the notary public's request, shall release any record related to a notarial act performed for a remotely located individual by the notary public.

(B) If the provider of communication technology and the provider of the backup are separate entities, the provider of communication technology shall sign an agreement with the provider of the backup that includes both of the following requirements:

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(i) If the provider of communication technology or the provider of the backup ceases business operations, the entity ceasing business operations shall notify the other entity and the notary public in advance of the cessation of business operations.

(ii) At the notary public's request, the provider of the backup shall release to the notary public any record related to a notarial act for a remotely located individual performed by the notary public.

(b) Each provider of communication technology shall protect from unauthorized access the audiovisual recording of each notarial act and any "personal information," as defined in K.S.A. 50-7a01 and amendments thereto, disclosed during the performance of a notarial act using communication technology. The audiovisual recording shall be created in an industry-standard file format and shall not include images of any electronic record on which the remotely located individual made a statement or on which the remotely located individual executed a signature.

(c) Each notary public shall take reasonable steps to ensure that the communication technology used to perform a notarial act for a remotely located individual is secure from unauthorized interception.

(d) Any provider of communication technology may provide a hardware or software update to the technologies that the notary public identified in the notification form to perform notarial acts for remotely located individuals if the hardware or software update is not materially different from the technologies that the notary public identified on the notification form to perform notarial acts for remotely located individuals. The provider of communication technology shall offer an assurance to the notary public that the update does not represent a

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material difference from the technology that the notary public identified on the notification form provided to the secretary. If the provider of the technology notifies the notary public that the hardware or software update is materially different from the hardware or software identified on the notification form to perform notarial acts for remotely located individuals provided to the secretary, the notary public shall update the technology information with the secretary.

(Authorized by K.S.A. 2021 Supp. 53-5a27; implementing K.S.A. 2021 Supp. 53-5a15;

effective, T-_____, _____; effective P-_____.)

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7-43-23. Record retention and repositories. (a) Each journal shall be retained for at least 10 years after the last notarial act chronicled in the journal. Each audiovisual recording shall be retained for at least 10 years after the recording is made.

(b) Each notary public who maintains a notary public journal in an electronic format shall meet the following requirements:

(1) Retain the journal and any audiovisual recordings in a way that protects the journal and recordings against unauthorized access by means of a password or other secure means; and

(2) take reasonable steps to ensure that a backup of the journal and audiovisual recordings exists and is secure from unauthorized use.

(c) On the death or adjudication of incompetency of a current or former notary public, the notary public's personal representative or guardian or any other person knowingly in possession of a journal or an audiovisual recording shall perform one of the following:

(1) Comply with the retention requirements of this regulation;

(2) transmit each journal and audiovisual recording to one or more repositories under subsection (d); or

(3) transmit each journal and audiovisual recording in an industry-standard readable data storage device to the secretary.

(d) A notary public, a guardian, conservator, or agent of a notary public, or a personal representative of a deceased notary public may, by written contract, engage a third party to act as a repository to provide the storage required by this regulation if a third party has verified to the secretary under penalty of perjury that the party meets the requirements specified in this regulation. The contract shall meet either of the following requirements:

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(1) Enable the notary public, the guardian, conservator, or agent of the notary public, or the personal representative of the deceased notary public to comply with the retention requirements of this regulation even if the contract is terminated; or

(2) provide that the information will be transferred to the notary public, the guardian, conservator, or agent of the notary public, the personal representative of the deceased notary public, or the secretary if the contract is terminated. (Authorized by K.S.A. 2021 Supp. 53-5a27; implementing K.S.A. 2021 Supp. 53-5a15 and 53-5a20; effective, T-_____, _____; effective P-_____.)

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7-43-24. Alleged complaints and errors by notaries public. (a)(1) Any person may file a complaint, in writing, against a notary public with the secretary.

(2) Each filed written complaint shall be reviewed by the secretary to determine the validity of the complaint. If the secretary determines the complaint to be valid, written notification outlining the complaint and providing the notary public with 30 days from the date of the notification to respond shall be provided by the secretary to the notary public. If the secretary identifies an error in a notarization submitted to the secretary's office, written notification outlining the error and providing the notary public with 30 days from the date of the notification to respond shall be provided by the secretary to the notary public.

(3) Each response provided by a notary public shall be reviewed by the secretary before any action is taken regarding the notary public's commission. Written notification shall be provided by the secretary to the notary public, stating any action taken regarding the notary public's commission as the result of a complaint received or error identified by the secretary.

(b) If the secretary suspends a notary public's commission, the notary public shall, within 30 days before the end of the suspension, notify the secretary of any changes to the notary public's commission that occurred during the suspension period. Failure to comply with this requirement may result in revocation of the notary public's commission. (Authorized by K.S.A. 2021 Supp. 53-5a27; implementing K.S.A. 2021 Supp. 53-5a24; effective, T-_____, _____; effective P-_____.)

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Kansas Administrative Regulations Economic Impact Statement (EIS)

785-296-3483

Kansas Secretary of State
Agency

Clay Barker
Agency Contact

785-292-3483
Contact Phone Number

7-43-1 through 7-43-24 (Permanent)
K.A.R. Number(s)

☒ Permanent ☐ Temporary

Is/Are the proposed rule(s) and regulation(s) mandated by the federal government as a requirement for participating in or implementing a federally subsidized or assisted program?

- ☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.
- ☒ No If no, do the total annual implementation and compliance costs for the proposed rule(s) and regulation(s), calculated from the effective date of the rule(s) and regulation(s), exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024 (as calculated in Section III, F)?
- ☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration, the Attorney General, AND the Division of the Budget. The regulation(s) and the EIS will require Budget approval.
- ☐ No If no, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

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Section I

Brief description of the proposed rule(s) and regulation(s).

K.A.R. 7-23-7 through K.A.R. 7-23-24 implement L. 2021 ch. 64. (SB 106), which enacts the revised uniform law on notarial acts. The bill requires the secretary of state to promulgate regulations relating to many aspects of notarizations, including regulations for short form notarial certificates, mandatory notary journals, and for performing notarizations for remotely located individuals.

In addition, the same bill revoked the following regulations: K.A.R. 7-43-1 through K.A.R. 7-43-6. Revoking these regulations will not have an economic impact.

Section II

Statement by the agency if the rule(s) and regulation(s) exceed the requirements of applicable federal law, and a statement if the approach chosen to address the policy issue(s) is different from that utilized by agencies of contiguous states or the federal government. *(If the approach is different or exceeds federal law, then include a statement of why the proposed Kansas rule and regulation is different.)*

The approach chose to address the issue of implementing remote notarization and mandatory journals is the same as contiguous states that have adopted the revised uniform law on notarial acts.

Section III

Agency analysis specifically addressing the following:

- A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

These regulations may enhance business activities and growth by enabling certain business activities to occur in a more efficient and cost-effective manner due to the implementation of remote notarizations. The agency is unaware of any restriction the rules and regulations would have on business activities and growth.

- B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule(s) and regulation(s) and on the state economy as a whole;

The regulations do not require, and the agency does not anticipate, any compliance costs to public utility ratepayers, individuals other than notaries, or local governments from the regulation beyond what the statute contemplated. Any additional costs to notaries public, other than purchasing a journal if not already using one, are voluntary, not mandatory.

First, only those notaries who want to perform notarizations of electronic records in-person e-notarizations (IPENS) or notarizations for remotely located individuals (RONs) would incur costs. These costs include the (1) information and services fees the notary pays, which are lower than the statute permits, (2) statutorily prescribed training which the Secretary is providing free of charge,

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and (3) costs associated with obtaining the resources to perform IPENs and RONs, which would be required for anyone wanting to perform such services. Such costs vary among notary technology providers and can range up to several hundred dollars annually depending on the notary technology provider selected, whether the notary chooses more than one technology provider, the volume of notarizations performed, and whether the notary requires any additional hardware or software (such as a webcam).

C. Businesses that would be directly affected by the proposed rule(s) and regulation(s);

Businesses that would be directly affected by the regulations are those that employ a notary. These are most likely to include, but are not limited to, law firms, real estate companies, title agents, and financial institutions.

D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

The rules and regulations provide additional methods for individuals and businesses to obtain notarial services. Remote online notarizations can eliminate the time and cost of traveling to a notary to obtain notarial services and can make obtaining a notarization for multiple individuals who need to sign a document but who are not in the same location a more efficient process for businesses and their customers.

E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

Kansas stakeholders representing industries in which notary services are frequently used were consulted and feedback was requested and received during the drafting of the regulations. The agency also reviewed rules and regulations from other states to understand the potential impact of the proposed rules and regulations. Any costs incurred by a notary for providing remote notarization are voluntary.

SB 106 requires that a notary who wants to perform remote notarizations to complete a course of study and pass an examination administered by the secretary of state prior to performing such notarization. As part of the regulations, the agency is making both available without cost to notaries. Further, the rules and regulations do not mandate specific notary technology providers that a notary must use, but rather sets the standards that providers must meet, which may permit additional flexibility for notaries to choose an option that best meets their needs, including the cost of providing notarizations for remotely located individuals or in-person electronic notarizations.

F. An estimate of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governments, or members of the public.

Note: Do not account for any actual or estimated cost savings that may be realized.

Costs to Affected Businesses – \$varies

Costs to Local Governmental Units – \$none

Costs to Members of the Public – \$none

Total Annual Costs – \$Unknown
(sum of above amounts)

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Give a detailed statement of the data and methodology used in estimating the above cost estimate.

This is not possible to quantify. Any costs associated with providing the remote notary services will vary from one notary to another and will only be incurred if a notary chooses to offer these services. If a notary does not choose to provide these services, the regulations will have no effect on the notary, businesses, or local governments. It is unknown how many of the approximately 50,000 notaries registered in Kansas may choose to provide the new remote services.

- ☐ Yes If the total implementation and compliance costs exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024, and prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.
- ☐ No
- ☒ Not Applicable

If applicable, click here to enter public hearing information.

Provide an estimate to any changes in aggregate state revenues and expenditures for the implementation of the proposed rule(s) and regulation(s), for both the current fiscal year and next fiscal year.

There will be a small increase in agency fee revenue due to the fee for being able to provide remote notarizations. The number of notaries who will decide to provide these services is unknown

Provide an estimate of any immediate or long-range economic impact of the proposed rule(s) and regulation(s) on any individual(s), small employers, and the general public. If no dollar estimate can be given for any individual(s), small employers, and the general public, give specific reasons why no estimate is possible.

The long-range economic impact will be the savings of time and financial costs related to countless remote notarizations that will no longer require personal travel.

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

The regulations will have not increase or decrease revenues of cities, counties, or school districts; other than any voluntary costs incurred to provide remote notarizations.

- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

The Agency consulted with representatives of organizations most directly affected by remote notarization – banks, legal services, real estate services, and title companies.

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Section IV

Does the Economic Impact Statement involve any environmental rule(s) and regulation(s)?

- ☐ Yes If yes, complete the remainder of Section IV.
☒ No If no, skip the remainder of Section IV.

A. Describe the capital and annual costs of compliance with the proposed rule(s) and regulation(s), and the persons who would bear the costs.

B. Describe the initial and annual costs of implementing and enforcing the proposed rule(s) and regulation(s), including the estimated amount of paperwork, and the state agencies, other governmental agencies, or other persons who would bear the costs.

[Click here to enter agency response.](#)

C. Describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons who would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

[Click here to enter agency response.](#)

D. Provide a detailed statement of the data and methodology used in estimating the costs used.

[Click here to enter agency response.](#)

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