

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 p.m. on March 16, 2004 in Room 313-S of the Capitol.

All members were present except:
Representative Dan Williams- excused

Committee staff present:
Jill Wolters, Revisor of Statutes
Diana Lee, Revisor of Statues
Jerry Ann Donaldson, Kansas Legislative Research Department
Cindy O'Neal, Secretary

Conferees appearing before the committee:
Melissa Wangemann, Office of Kansas Secretary of State
Marilyn Nichols, Register of Deeds Association

The hearing on **SB 357 - Kansas Notary Public Act**, was opened.

Melissa Wangemann, Office of Kansas Secretary of State, appeared as the sponsor of the bill which would modernize the statutes governing notaries public. The Model Act was drafted in 2002 and was not intended to create a uniform law from state to state. The proposed bill recommends that the current bond of \$7,500 be raised to \$25,000 but the Senate lowered that amount to \$10,000. The increase was suggested to cover potential losses caused by notary misconduct. It also gives clear and precise directions to notaries for the performance of notarial acts and requires education and training prior to taking the examination. Ms. Wangemann provided the committee with a list of technical amendments which were clarifying in nature. (Attachment 1)

Marilyn Nichols, Register of Deeds Association, appeared as a proponent of the bill and suggested that the committee might want to make the penalties for deliberate fraud stronger. (Attachment 2)

Written testimony in support of the bill was provided from the National Notary Association (Attachment 3)

The hearing on **SB 357** was closed.

House Substitute SB 18 - Reassignment of District Magistrate Judges

Representative Patterson made the motion to strike the provisions of House Substitute SB 18 and replace them with the provisions of HB 2678 - increasing claim limit in small claims court from \$1,800 to \$4,000. Representative Jack seconded the motion. The motion carried.

Representative Loyd made the motion to change the limit dollar amount to \$3,200. Representative Swenson seconded the motion. The motion carried.

Representative Loyd made the motion to report House Substitute for House Substitute SB 18 favorably for passage. Representative Swenson seconded the motion. The motion carried.

SB 315 - requiring a \$20 domestic post-decree motion fee on any domestic post-decree motion

While the committee understood the clerks problems of having to read each motion to see a if fee needed to be charge, they felt that this issue could be addressed by court rule requiring that the caption specify exactly what is being filed. Therefore, the committee took no action on the bill.

The Chairman appointed the following member on a subcommittee on **SB 19 - mandatory retirement age of 75 for judges and justices**: Representatives Jack, Goering, Loyd, Mast, Pauls & Davis.

The committee adjourned. The next meeting was scheduled for March 18, 2004.

RON THORNBURGH
Secretary of State



Memorial Hall, 1st Floor
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TESTIMONY OF THE SECRETARY OF STATE
TO THE HOUSE JUDICIARY COMMITTEE
ON SB 357

MARCH 16, 2004

Mr. Chairman and Members of the Committee:

I appreciate the hearing on SB 357, which would enact the Model Notary Public Act of 2002. This bill was requested by the Secretary of State.

The Model Notary Public Act of 2002 was drafted by a group of experts impaneled by the National Notary Association. The drafting committee included lawyers, professors, and bankers, along with experts in real estate and electronic/digital commerce, a Secretary of State, an Attorney General, and the former Register of Deeds of Johnson County, Kansas.

The Model Act modernizes the statutes governing notaries public. It updates the Model Notary Act of 1984 and the Model Notary Act of 1973, and adds technological changes to accomplish electronic transactions. Current Kansas notary laws are loosely based on the 1973 act, but do not include any amendments from the 1984 act, and therefore our act is behind on revisions.¹

Because the act is a "model" and not a "uniform" act, it is not intended to create a uniform law from state to state; rather, it is intended to serve as a "model" for states to use in revising their notary laws. The Secretary of State has studied the model act over the course of three years. Our conclusion is the model act will improve Kansas notary laws and therefore should be adopted. We have omitted some sections of the model act, which I will explain.

Background Information on the Role of Notaries Public

The purpose of a notary public is to ensure against forgery and fraud by confirming that the person signing the document is in fact the person he says he is. Important documents used in business deals, real estate sales, automobile sales, and other transactions must be reliable evidence of the parties' commitment to the transaction. Proof of the signature's authenticity is necessary to ensure the legitimacy and validity of the transaction.

¹ Kansas notary law also includes the Uniform Law on Notarial Acts as promulgated by the National Conference of Commissioners on Uniform State Laws in 1984. SB 357 includes some cosmetic changes to the uniform act, but the substantive provisions of that act remain unchanged. Sections 28-36 of the bill contain the UNLA provisions.

The purpose of a notary public has evolved to include the duty to check the signer's ability to understand the document and the signer's willingness to sign the document. Kansas statutory law does not specifically require that the notary public determine the signing party's ability to understand or willingness prior to the notarization. The Model Act adds this component to a notary's duties.

The Secretary of State recommends the adoption of the Model Act for the following reasons:

Clear and Precise Direction to Notaries

The Model Act clarifies the role of a notary public by providing clear and precise guidance for the performance of notarial acts. Vague and ambiguous sections of current law would be replaced with specific requirements that are easy to understand and follow. A better understanding of notarial duties will encourage notaries to perform their duties correctly.

Increased Bond Amount

Current Kansas law requires notaries to obtain a \$7,500 bond. The \$7,500 amount dates back to 1984. The Model Act recommends a \$25,000 bond. It should be noted that no other state currently requires a \$25,000 bond, although this fact may change as states adopt the Model Act. The highest bond among the states is California at \$15,000, and the amount most often used among the states is \$10,000.

The drafting committee increased the bond amount to cover potential losses caused by notary misconduct. As values increase, so do the potential losses caused by notary negligence or mistake. The current amount of \$7,500 does not cover the average cost of a new car, for example, and a person who loses ownership of his car due to a fraudulent bill of sale would be afforded a better chance of recovering losses with a \$25,000 bond.

Current Kansas law allows two personal sureties in place of a bond, meaning that two individuals may agree to cover the losses. Our bill draft eliminates this alternative to the bond because these two persons are not required to prove financial ability, and therefore this provision affords little to no protection to the public.

The Senate Judiciary Committee amended the bond amount from the recommended \$25,000 to \$10,000. During the subcommittee's hearing on the bill, the discussion focused on a \$15,000 bond. We would prefer to see the bond raised to at least \$15,000 for the protection of Kansas consumers.

Education and Testing

The Model Act requires that notaries take a course of instruction and pass an examination prior to receiving their commissions. The Secretary of State chose to include this provision of the model act because of the number of complaints our office receives involving notary misconduct. We provide a handbook of laws and responsibilities to all notaries, but it is obvious more active

education is required. Effective training and testing would confirm that notaries have a basic understanding of their duties.

The Senate Judiciary Committee, however, eliminated the sections relating to education and testing. During subcommittee discussions on the bill, the subcommittee approved of these measures. In subsequent discussions with the chairman of the subcommittee, and other members of the committee, it appears that the senate committee is amenable to restoring the requirements of education and testing.

Criminal Sanctions

The Model Act includes criminal sanctions against notaries and employers who misuse their notaries' commissions. While assessing criminal sanctions against notaries seems to be a bold addition, notary misconduct causes losses to individuals and should be punished. The Senate committee amended the bill to decrease the criminal levels.

Our bill does not include the following provisions of the Model Act:

Separate Chapter on Electronic Notaries

The Model Act separates regular notaries public from electronic notaries, resulting in a much longer law with duplicative provisions. Our office saw no reason to separate out the two types because the only difference is the manner in which the document is notarized (an inked signature on paper versus a digital/electronic signature on an e-document). Because technology in this area is not fixed, but is ever evolving, we delegated many of the requirements for electronic notarizations to rules and regulations. Rule and regulation authority would provide us the flexibility to move to more robust technology in future years if advantageous to notarial transactions.

Required Journals

The Model Act requires notaries to maintain a journal in which they memorialize information about each notarization they perform. The journal protects the notary from allegations of misconduct, and also provides evidence proving or disproving an alleged notarization. Although the Secretary of State recommends journals to all notaries—and, in fact, the notaries in our office all maintain journals—we do not believe that government should mandate this action. However, 18 states have enacted a journal requirement.

Technical Points, Corrections

Lastly, I want to note for the committee's information that the revisor has included within the bill draft sections of Kansas law that are not being amended. The purpose of including these provisions is to relocate them into one uniform and comprehensive notary law. Thus the bill

includes some sections that have no substantive changes. I also request some technical corrections to the bill draft, which are attached. These amendments were missed by the Senate Committee.

I appreciate the opportunity to appear on SB 357 and I would be happy to answer questions.

Melissa Wangemann, Legal Counsel
Deputy Assistant Secretary of State

**TECHNICAL CORRECTIONS TO SB 357
PROPOSED BY THE SECRETARY OF STATE**

1. Page 2, line 21. Strike “is” and insert “in”
2. Page 3, line 27. Strike “a” and insert “an”
3. Page 7, line 3. Strike “by or for it”
4. Page 14, line 7. Strike “must” and insert “shall”
5. Page 14, lines 35; Page 15, lines 3, 15, 26, and 36. Strike parenthesis around “County”
6. Page 16, lines 8-10. Should repealer include 53-101, 53-102, 53-103, 53-104, 53-105, 53-105a, 53-106, 53-107, 53-109, 53-113, 53-114, 53-115, 53-116, 53-117, 53-118, 53-119, 53-120, statutes that are being replaced with new provisions of SB 357.

KANSAS REGISTER OF DEEDS ASSOCIATION

Marilyn L. Nichols
Shawnee County Register of Deeds
700 SE 7th Street, Room 108
Topeka, Kansas 66603-3932

TESTIMONY OF THE KANSAS REGISTER OF DEEDS ASSOCIATION
TO THE HOUSE JUDICIARY COMMITTEE

SB 357

KANSAS NOTARY PUBLIC ACT

March 11, 2004

Representative O'Neal (Chair) and Members of the Committee:

I am here today on behalf of the Kansas Register of Deeds Association. I thank you for the opportunity that allows me to offer this testimony during your decision making process.

Our understanding of the intent of this bill is to enact the Kansas Notary Public Act, and to clarify the role of the notary public. I did attend the work session on this bill in the Senate as an observer and listened to the testimony offered by the Secretary of State in support of the bill as originally written. We, as the Kansas Register of Deeds Association, were in support of the original bill and specifically were supportive of the educational aspects and requirements for notaries. As you may know, the Register of Deeds office is responsible for the recording of documents concerning real estate transactions in each county. Those documents that convey real property must be signed by the Grantors and their names must be fully acknowledged. While some notaries are quite familiar with deeds and mortgages, some are not familiar with what it means to have a full acknowledgement appears on a document. The educational process that was in place in the original bill would have solved many problems that we encounter quite often with documents that are rejected for recording simply because of a mistake or due to an incomplete acknowledgement. Our Association is unaware of the reasons for the amendment that deletes the portion of this bill that required the applicant for a notary commission to pass a course of instruction and examination prescribed by the secretary of state. Why would we not want these applicants to

fully understand their responsibilities before taking on this commission?

The rejection of documents in general is more than just an inconvenience to the presenter. Quite often it entails additional costs to our offices in postage, and or to the recipient, especially if the document is several pages in length and has been submitted by overnight or express mail of some sort. Delays in recordings can be avoided on those rejected documents if the notary had been complete in the first place. I have been trying to collect some statistics for these kinds of problems since the first work session I attended on this bill. The majority of the documents we receive are in a recordable fashion. Of those we do have to reject, I think that a quarter of them are for an acknowledgement problem that a fully trained Notary Public would not have made.

The Kansas Register of Deeds Association supports SB 357 in general, but specifically as originally introduced. We would encourage this committee to consider restoring the contents of the original bill.

I thank you for your time and attention to this important matter and would be happy to stand for any questions from this distinguished committee.



NATIONAL NOTARY ASSOCIATION

March 16, 2004

House Judiciary Committee
State Capitol
Topeka, KS 66612

RE: Support For Senate Bill 357

Mr. Chairman and Member of the Committee:

On behalf of the National Notary Association, a non-profit educational organization serving the 4.5 million Notaries of the United States, and the approximately 134,000 Notaries of Kansas, I would like to express the NNA's strong support for Senate Bill 357. Senate Bill 357, which creates the Notary Public Act, elucidates the role of a Notary Public by providing precise guidelines for the performance of notarial acts. Clear and comprehensible law outlining notarial duties will aid Notaries in performing their duties properly.

We would request that the committee consider reinserting the requirements that applicants for a Notary commission pass a course of instruction and an examination on their notarial duties. We believe that it is in the best interest of the public for Notaries to learn their important responsibilities in an organized and methodical fashion, rather than leaving their education to chance. The public pays for what Notaries fail to learn.

Notaries guard against forgery and fraud by verifying the identity of signers of critical documents used in business deals, real estate conveyances, automobile sales, and other transactions. Proof of each signature's authenticity is necessary to ensure the legitimacy and validity of these transactions.

The NNA strongly encourages you to enact SB 357.

Sincerely,

A handwritten signature in cursive script that reads "Charles N. Faerber".

Charles N. Faerber
Vice President, Notary Affairs

House Judiciary Committee
3-16-04
Attachment 3