

SESSION OF 2004

SUPPLEMENTAL NOTE ON SENATE BILL NO. 357

As Amended by Senate Committee on
Judiciary

Brief*

SB 357 would enact the Kansas Notary Public Act, a model act promulgated by the National Notary Association.

The act clarifies the role of the notary public. The bill provides that the Secretary of State shall issue a notary commission to any qualified person who submits an application, oath of office, and a \$10,000 bond. A qualified person shall:

- ! be at least 18 years of age;
- ! reside or have a regular place of work or business in this state; and
- ! reside legally in the United States.

A person commissioned as a notary may perform notarial acts in any part of this state for a term of four years. The notary shall secure a bond for this period.

A notary is empowered to perform the following notarial acts:

- ! acknowledgment;
- ! administering oaths and affirmations;
- ! verification;
- ! witnessing or attesting a signature;
- ! copy certification; and
- ! any other acts authorized by law.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

A notary may accept the use of a mark instead of a signature on a document if:

- ! the mark is affixed in the presence of the notary and two witnesses unaffected by the document;
- ! both witnesses sign their own names beside the mark;
- ! the notary states below the mark: "Mark affixed by (name of signer by mark) in presence of (names and addresses of witnesses) and undersigned notary"; and
- ! the notary notarizes the signature by mark through an acknowledgment, verification, or signature witnessing.

Notary acts may be performed electronically by a commissioned notary public who complies with the provisions of this act, the Kansas uniform electronic transactions act and other applicable law; and affixes an electronic notarial certificate as authorized by the Secretary of State.

A notary shall not perform a notarial act if the principal:

- ! is not in the notary's presence at the notarization;
- ! is not personally known to the notary or identified by the notary through satisfactory evidence;
- ! in the notary's judgment, does not appear to be aware of the significance of the transaction requiring a notarial act; or
- ! in the notary's judgment, is not acting of his or her own free will.

A notary shall not execute a certificate containing information known or believed by the notary to be false. A notary shall not affix an official signature or seal on a notarial certificate that is incomplete. A notary shall not provide a signed or sealed notarial certificate to another person with the understanding that it will be completed or attached to a document outside of the notary's presence. A notary shall not

notarize a signature on a document without notarial certificate wording.

A notary is liable to any person for damages caused by the notary's negligence, intentional violation of law, or official misconduct in relation to a notarization.

A surety for a notary's bond is liable to any person for damages 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 may not exceed the dollar amount of the bond.

An employer of a notary is liable to any person for damages caused by the notary's's negligence, intentional violation of law, or official misconduct in performing a notarization during the course of employment, if the employer directed, encouraged, or approved the notary's negligence, violation of law, or official misconduct.

No suit shall be instituted against a notary public, a surety, or an employer more than three years after the cause of action accrues.

The bill provides that the Secretary of State may establish rules and regulations for electronic notaries. The bill also requires notaries to maintain a journal in which each notary transaction is recorded.

Violations of the law are a class C misdemeanor.

The Senate Committee reduced the bond amount from \$25,000 to \$10,000. Current law requires a \$7,500 bond. The Committee also struck the education and testing requirements and reduced the penalty for violations from a class B nonperson misdemeanor to a class C misdemeanor.

Background

The bill was supported by the Secretary of State's Office.

The bill has no fiscal effect on the state.